

Conflict Resolution Appendix

This Conflict Resolution Appendix (**Appendix**) is a part of any document that expressly incorporates this Appendix by reference (**Reference Document**). It is an integral part of each Reference Document, each of which is enforceable according to its terms. **ALL REFERENCE DOCUMENTS ARE SUBJECT TO THE FEDERAL ARBITRATION ACT (9 U.S.C. §§1-16) OR THE APPLICABLE STATE STATUTES, INCLUDING THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (TITLE 15 CHAPTER 48), AS THE CASE MAY BE.**

Context. Acknowledging the excessive costs and time attendant with litigation, the parties to the Reference Document agree to use alternative means to resolve their disputes. The parties adopt the following graduated process to resolve disputes arising from the Reference Document: (A) meet and negotiate a resolution themselves; (B) if unsuccessful, engage a mediator to help them reach a compromise; (C) as a last resort, engage an arbitrator to resolve the dispute.

1. Dispute Notice. If a dispute arises between parties that is not resolved in the ordinary course of business, then a party (**Claimant**) may notify the other party (**Respondent**) of the dispute (**Dispute Notice**). The Dispute Notice will include (a) a summary of the dispute; (b) the Claimant's position; and (c) any material and relevant documentary information or references relating to the dispute that are in Claimant's control. Within 5 business days after receiving the Dispute Notice, Respondent will respond in writing by either (a) agreeing to Claimant's position or (b) scheduling a meeting to attempt to resolve the dispute within 10 business days following receipt of the Dispute Notice.

2. Continuing Obligation To Perform. During the Dispute Resolution process: (a) the parties will continue in good faith to perform their respective obligations according to the Reference Document; and (b) any payments which are the subject of the dispute otherwise required to be paid in the absence of a dispute will be deposited in trust with a neutral third-party escrow agent, and disbursement of such amounts will be according to the final resolution of the dispute. Throughout the dispute resolution process, the parties will have a continuing obligation to produce all relevant documentary information or references relating to the dispute that are in the parties' respective control.

3. Meeting To Resolve Dispute. If Respondent schedules a dispute resolution meeting, Respondent will provide Claimant (a) Respondent's written position and (b) any material and relevant documentary information or references relating to the dispute in control of Respondent. Each party will appoint an individual authorized to act with regard to the dispute. Meetings may be conducted by any

agreed means of communication and must be concluded within 20 business days of receipt of the Dispute Notice. If the dispute is not resolved within 5 business days after the last meeting date, then each party will prepare and exchange a written summary, not to exceed 2 pages, 8.5"x11" sheet, single-spaced, 11-point Times New Roman font with 1-inch margins (**Written Summary**). The Written Summaries will identify the position of each party on (a) all resolved issues, including the manner of resolution; and (b) all unresolved issues, as well as the party's proposed resolutions. Issues that both parties agree are resolved are conclusive. Only those issues that a party identifies as unresolved in its Written Summary will be subject to mediation and arbitration; other issues will not be subject to mediation or arbitration. The purpose of the Written Summaries is to narrow the areas in dispute, and the parties shall act in good faith to achieve that purpose.

4. Mediation. If the parties are unable to resolve the dispute, then within 10 business days from the date the Written Summary was due, either party may initiate mediation by notice to the other. The mediation will generally follow the International Institute for Conflict Prevention & Resolution (**CPR**) Mediation Procedure (see cpradr.org). Within 5 business days of initiating mediation, the parties or their legal counsel will attempt in good faith to select a single mediator; if they cannot, then a neutral will be selected by each party (and compensated by same) who will together select a neutral to mediate the dispute. The mediator will be a qualified neutral (not necessarily a member of the CPR panel of neutrals), a member of the state bar in the venue for the mediation designated in the Reference Document, and with substantial experience in matters related to the Reference Documents. The parties will present to the mediator the Written Summaries and any relevant material documents previously shared by the parties. The mediation will be completed within 30 days of the mediator's appointment. If the mediation resolves all disputed issues, the parties will bear their own mediation costs and equally share the mediator fees. The parties shall act in good faith during the mediation to narrow the issues remaining in dispute.

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5. Arbitration. If the mediation fails to resolve the dispute, then either party may initiate arbitration within 30 days after the mediation concludes. Arbitration will be governed by the applicable state law or the Federal Arbitration Act (9 U.S.C. §§1-16), as the case may be, and will generally follow the CPR Non-Administered Arbitration Rules effective as of the date of the Reference Document. Within 5 business days of initiating arbitration, the parties or their legal counsel will attempt in good faith to select a single arbitrator; if they cannot, then a neutral will be selected by each party (and compensated by same) who will together select a third neutral, to be the sole arbitrator of the matter. The arbitrator will be a qualified neutral (not necessarily a member of the CPR panel of neutrals), a member of the state bar in the venue for the mediation designated in the Reference Document, and with substantial experience in matters related to the Reference Documents. The parties will present to the arbitrator the Written Summaries and any relevant material documents previously provided to the mediator. Arbitration will be held in the location specified in the Reference Document. The final written factual and legal bases of the decision will be provided to the parties within 60 days of the arbitrator's appointment. Each party will bear its own legal fees and other expenses related to the mediation, arbitration, or any judicial action, unless the arbitrator determines that a party acted in bad faith, in which case the arbitrator may award reasonable legal fees and expenses to the other party. The parties' good faith compliance with the intent of this Appendix will be a material factor in such determination.

6. Application and Finality of Arbitration. The procedures outlined in this Appendix will be the sole and exclusive process for dispute resolution between the parties relating to the Reference Document. Judgment upon an arbitrator's determination may be entered by any court having competent jurisdiction over the affected party.

7. Injunctions. A party will be entitled to seek a restraining order or injunction in any court of competent jurisdiction to prevent continuation of any violation of the Reference Document. No more than

\$10,000 will be necessary for purposes of providing adequate security to assure that a party wrongfully restrained or enjoined will be paid costs and damages. The security cap does not limit the amount of actual costs or damages which a party wrongfully restrained or enjoined may recover.

8. Modification; Waiver. No provisions of this Appendix may be modified unless agreed to by the parties. Waiver of a particular breach of this Appendix will not be interpreted as a course of dealing or as a waiver of any other breach.

9. Invalidity of Provisions. If any provision of this Appendix is determined to be unenforceable under applicable law, the enforceability of the remaining provisions will be unaffected. The parties acknowledge that this section is reasonable even if it modifies applicable law.

10. Notices. Notices and other communications given under this Appendix will be in writing and effective if delivered by (a) hand-delivery; (b) certified United States mail; (c) national express courier; (d) electronically; or (e) any other method in which proof of receipt can be independently verified. Notices will be sent to the addresses appearing in the Reference Documents or otherwise reasonably available. Delivery will be deemed to have occurred at the time of actual or attempted delivery. Time frames between events will begin the day after receipt.

11. Governing Law and Location. This Appendix is governed by and will be construed according to the law applied to the interpretation of the Reference Document. Principles related to conflicts of laws will not apply. The location of mediation or arbitration will be controlled by the Reference Document.

12. Independent Counsel. Each party has had the opportunity to receive independent legal advice regarding the application of this Appendix and meaning of its provisions. No presumptions will be made in favor of the non-drafting party.

13. Exemption. If prohibited by the Federal Acquisition Regulation or Defense FAR Supplement, as applicable, arbitration is not required by this Appendix.