

Conflict Resolution Appendix (Employment/Services 2018)

This Conflict Resolution Appendix (Employment/Services 2018) (**Appendix**) is an integral part of any document related to the provision of services that incorporates it by reference (**Reference Document**). **THE REFERENCE DOCUMENT, INCLUDING THIS APPENDIX, MAY BE SUBJECT TO THE FEDERAL ARBITRATION ACT (9 U.S.C. §§1-16), SOUTH CAROLINA UNIFORM ARBITRATION ACT (TITLE 15 CHAPTER 48), OR OTHER APPLICABLE STATE STATUTE.**

Context. The parties have entered into an agreement for personal services, and they acknowledge conflicts often result in ill will, wasted time, and unnecessary costs to resolve. They have decided to use a predetermined process to minimize those adverse effects. In summary they agree to:

- First* – Meet and attempt to resolve the conflict;
- Second* – Failing first, mediate the conflict to reach a compromised settlement;
- Third* – Failing first and second, initiate the appropriate governmental process or arbitration with a third party deciding the outcome.

1. Exemption Required by FAR. Nothing in the Appendix requires arbitration. Specifically, it is not required with respect to conflicts arising pursuant to (a) any claim under title VII of the Civil Rights Act of 1964 (42 USC §§2000e, et seq.) related to wrongful discrimination; or (b) any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

2. Continuing Obligations. During the conflict resolution process: (a) if there are ongoing obligations the parties will continue to perform them in good faith according to the Reference Document; and (b) any payments which are the subject of the conflict and otherwise required to be paid in the absence of a conflict will be deposited in trust with legal counsel for the obligated party, and disbursement will be according to the final resolution of the conflict. Throughout the conflict resolution process, the parties will have a continuing obligation to produce all relevant documentary information or references relating to the conflict in their respective control.

3. Conflict Notice. If a conflict arises between parties about the working relationship which is not resolved in the ordinary course of business, then the aggrieved party (**Claimant**) may notify the other party (**Respondent**) of the conflict (**Conflict Notice**). The Conflict Notice will include (a) a summary of the conflict; (b) the Claimant's position; and (c) any material and relevant documentary information or references relating to the conflict that are in Claimant's control. Within 5 business days after receiving the Conflict Notice, Respondent will respond in writing by either (a) agreeing to Claimant's position and

commencing remedial actions or (b) scheduling a meeting to resolve the conflict within 5 business days following responding to the Conflict Notice.

4. Meeting to Resolve Conflict. If Respondent schedules a conflict resolution meeting, then at least one business day before the meeting, Respondent will provide Claimant: (a) Respondent's written position and (b) material and relevant documentary information relating to the conflict which are in control of Respondent. An individual participating in the meeting on behalf of a party will be authorized to act to resolve the conflict. Any meeting may be conducted by any agreed means of communication, and may be adjourned, but must be concluded within 20 business days of Respondent's receipt of the Conflict Notice. If the conflict is not resolved at the meeting, then within 25 business days after Respondent's receipt of the Conflict Notice each party will prepare and exchange a written summary (**Summary**) for the purpose of narrowing the issues subject to the conflict, and the parties shall act reasonably to achieve that purpose. The Summaries will not exceed 2 pages, 8.5"x11" sheet, single-spaced, 11-point Times New Roman font with 1-inch margins. Summaries will include the position of each party on all unresolved issues, including a proposed manner of resolution. Only those issues identified as unresolved in the Summaries will be subject to further consideration; all others are deemed resolved for purposes of the conflict.

5. Mediation. If the parties are unable to resolve the conflict by meeting, and either of them wish to attempt to resolve the conflict, then within 10 business days from the date the 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 conflict. 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

Conflict Resolution Appendix (Employment/Services 2018)

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 issues, the parties will bear their own mediation costs; however, the party contracting for personal services will pay the mediator fees. The parties shall act in good faith during the mediation to narrow the issues remaining in conflict. The mediator will provide a dated writing ending the mediation when (a) at least one of the parties elects to end the mediation or (b) the mediator reasonably determines that the mediation has concluded.

5. Final Resolution. If the mediation fails to resolve the conflict, then either party may initiate governmental proceedings at any time within the period of limitations applicable to the conflict, or both parties may agree to initiate arbitration in lieu of judicial proceedings. No employee may be compelled to arbitrate. Any 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 March 1, 2018. 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. Unless otherwise determined by the arbitrator (or judge in the case of applying Section 6 or 7), the non-prevailing party will reimburse the prevailing party's reasonable legal fees and other expenses related to the mediation, arbitration, or any judicial action. The parties' good faith compliance with the intent of the 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 conflict 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) facsimile; (e) electronically; or (f) 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.