**This particular form is set up for the evaluative mediation type proceeding typically conducted by the various boards but the form may be adapted for other types of ADR proceedings (e.g., facilitative mediation, early neutral evaluation, etc.) Copies of other forms may be found at http://www.americanbar.org/content/dam/aba/administrative/public\_contract\_law/Final\_Version\_Practicing\_Before\_the\_Federal\_Boards\_of\_Contract\_Appeals.authcheckdam.pdf.**

**ALTERNATIVE DISPUTE RESOLUTION AGREEMENT**

**BETWEEN**

**ABC CONTRACTING, INC. (ABC)**

**AND**

**DEPARTMENT OF XYZ (XYZ)**

This Alternative Dispute Resolution (ADR) agreement is between the Department of XYZ (XYZ or agency) and ABC Contracting Inc. (ABC or appellant). XYZ and ABC have agreed to submit various matters in controversy to an ADR proceeding.

**TERMS OF THE ADR AGREEMENT**

1.  XYZ and ABC will voluntarily engage in a non-binding ADR proceeding and to negotiate in good faith.

2.  The purpose of the ADR proceeding will be to assist the parties in the resolution of various matters in controversy. (Describe dispute and matters that the parties would like to address during the ADR proceeding.)

3.  Each party will have present at the ADR proceeding a representative who has authority to settle the dispute.  Each party will be responsible for its own costs.  The neutral advisor will not charge either party for time or travel expenses.

**Neutral Advisor**

4.  The parties agree that Judge Jane Doe will serve as the neutral advisor to the parties.

**General Rules**

5.  For purposes of establishing a framework for the ADR proceeding , the parties agree to the general rules, submissions, and the ADR proceeding as set forth below.

6.  The neutral advisor shall preside over the ADR proceeding.  The neutral advisor will take an active role throughout the ADR proceedings to promote a fair settlement.

7. There (may/may not) be *ex parte* communications regarding the claims, as may be initiated by the neutral advisor or requested by either party prior to and/or during the ADR proceeding.

**Submissions**

8.  Position papers and other documents will be submitted prior to the ADR and when the submissions will be made. Position papers (will/will not) be submitted on the same day. Position papers are due on (date), and are limited to (number of) pages. The position papers (are/are not) confidential and (will/will not) be shared with the opposing party.

**ADR Proceeding**

**(This is where the parties should describe the type of ADR Proceeding that they would like conducted by the neutral advisor.)**

9.  While the ADR itself is not binding, and therefore the neutral advisor does not have the authority to impose a settlement on the parties, the neutral advisor will actively attempt during the course of the ADR to assist the parties in an effort to reach a satisfactory resolution of their claims and disputes.  During the ADR, the neutral advisor is authorized to conduct both joint and separate, *ex parte* meetings and caucuses with the parties, to make oral recommendations and suggestions for settlement and to comment on possible strengths and weaknesses of the parties' positions or case.  The neutral advisor may be present during negotiations between the parties.

10.  The ADR will begin at (time) a.m., local time on (date), at (location). The ADR is anticipated to take (number of) days. ABC will make its presentation first and then XYZ will respond with its position.  Clarifying questions will be allowed by the parties and the neutral during presentations, provided they are not disruptive to the presentation.  The parties will be allowed to caucus in separate break out rooms as necessary.  The neutral advisor will be allowed to visit each party and discuss the relevant issues.  The parties and the neutral advisor will then meet jointly in the ADR room to discuss entitlement.  This process will continue until the parties determine whether the issues can be resolved.

11.  The presentations to the neutral advisor will be informal.  The rules of evidence will not apply, and presenters may provide statements in the narrative.

12.  Neither party may cross-examine witnesses although either party may informally ask clarifying questions.  The neutral advisor may question participants.

13.  The presentation for each party can be structured as desired.

14.  The issues to be presented involve entitlement and quantum.

15.  If a full settlement of this matter is not reached during the ADR, then the parties shall define what remains in dispute and proceed with a hearing or a hearing on the record at a later date.

16.  All ADR proceedings are private, including but not limited to hearing and mediation.  The neutral advisor, the parties and their witnesses, authorized representatives, and counsel shall be permitted to attend the ADR.  Other persons shall attend only with the permission of both parties.

17.  No transcript or recording shall be made of any portion of the proceedings.  All aspects of the ADR proceeding s including, without limitation, any statements, or oral presentations made between or among the parties and/or neutral advisor at the ADR proceedings are inadmissible as evidence, whether or not for purposes of impeachment, in any pending or future court or Board action which directly or indirectly involves the parties and this matter in dispute.  However, if settlement is reached as a result of the ADR proceeding , any and all information prepared for, and presented at the proceedings may be used to justify and document the subsequent settlement.  Furthermore, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use at the ADR hearing.

**18.  The neutral advisor will treat the subject matter of this ADR proceeding as confidential, and refrain from disclosing any of the information exchanged to third parties.  The neutral advisor is disqualified as a witness, consultant or expert for either party in this or any other dispute between the parties arising out of performance of the contract.**

19.  Each party has the right to terminate this agreement at any time for any reason whatsoever.

(This agreement was signed on (date) by all individuals attending the ADR proceeding)

Name Date

Position

Name Date

Position

Name Date

Position

Name Date

Position

Name Date

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