

**ARMED SERVICES BOARD OF CONTRACT APPEALS
SAMPLE AGREEMENT TO UTILIZE THE SUMMARY PROCEEDING
WITH BINDING DECISION PROCEDURE**

18 May 2017

[NOTE 1: The following sample agreement is provided in response to requests the Board receives for examples of ADR agreements that may be suitable for use in ADR proceedings under Addendum II to the Board's Rules, Alternative Methods of Dispute Resolution. This sample is offered solely as an aid to the parties in focusing their thoughts on the ground rules that will best serve their interests in resolving a particular dispute. The Board recognizes that one of the strengths of the ADR process would be lost if the same procedural format were insisted on in every case. Thus, the Board by offering this sample does not intend to restrict the parties' discretion in tailoring the agreement to meet their particular needs. Paragraphs 12, 13, and 15, however, are key features of the Summary Proceeding with Binding Decision method of ADR and are mandatory. When the parties seek an oral hearing, paragraph 8 is also mandatory.

NOTE 2: The parties are advised that written material prepared specifically for use in an ADR proceeding, oral presentations made at an ADR proceeding, and all discussions in connection with such proceedings are considered "dispute resolution communications" as defined in the Administrative Dispute Resolution Act, 5 U.S.C. § 571(5). Pursuant to paragraph 5 of Addendum II to the Board's Rules, Alternative Methods of Dispute Resolution, such dispute resolution communications are presumed to be confidential and, unless otherwise specifically agreed by the parties, are inadmissible as evidence in any pending or future Board proceeding involving the parties or matter in dispute; however, evidence otherwise admissible before the Board is not rendered inadmissible because of its use in the ADR proceeding. Dispute resolution communications are subject to the confidentiality requirements of 5 U.S.C. § 574.]

SAMPLE

AGREEMENT TO UTILIZE THE
SUMMARY PROCEEDING WITH BINDING DECISION PROCEDURE
UNDER ADDENDUM II OF THE ASBCA'S RULES
(REVISED 21 JULY 2014): ALTERNATIVE METHODS OF DISPUTE RESOLUTION

THIS AGREEMENT is entered into by and between _____
_____ (hereinafter "appellant")
and the Department of _____ (hereinafter "the government").

WHEREAS, appellant and the government entered into Contract
No. _____; and

WHEREAS, appellant filed with the Armed Services Board of Contract Appeals (hereinafter the "ASBCA") an appeal under said contract; and

WHEREAS, said appeal is designated ASBCA No. _____; and

WHEREAS, ASBCA No. _____ involves claims by [appellant / the government for _____] in the amount of \$ _____; and

WHEREAS, the parties wish to resolve the appeal by alternative dispute resolution, specifically by summary proceeding with binding decision; and

WHEREAS, the ASBCA is authorized to resolve disputes by alternative dispute resolution under its Charter; and

NOW THEREFORE, the parties mutually stipulate and agree as follows:

1. Motion practice in this appeal is waived.
2. Discovery will be concluded by _____.
3. The documentary record will be limited to those documents which have been submitted, identified, and indexed pursuant to Board Rule 4 or as exhibits no later than _____.

[NOTE: If the parties seek an oral hearing on the appeal, ¶¶ 4-11 should be considered. The parties may agree to have the appeal decided on the documentary record. If so, appropriate procedures may be set forth in alternative paragraphs.]

4. Each party's hearing presentation will be limited to _____ [hours / days], including time for examination of witnesses, presentation of rebuttal evidence, and oral argument, if any.

5. The appeal shall be tried informally, and the rules of evidence are waived. The parties agree, nonetheless, that the presiding judge shall retain discretion to limit evidence where necessary for the reasonable conduct of the hearing.

6. Witnesses shall be examined orally under oath or affirmation. A party shall be allowed to cross-examine the adverse party's witnesses.

7. Pre- and post-hearing briefs are waived. [NOTE: A very brief (3 to 5 pages) prehearing submission is often useful to the presiding judge.]

8. [Mandatory when the parties seek an oral hearing] A transcript of the proceedings will be prepared.

9. The hearing on this appeal is scheduled for _____ day(s), namely: _____.

10. The issues in dispute shall be presented in the following order:

a. _____;

b. _____;

c. _____; and

d. [Other issues, if any]_____.

11. The Board shall issue a bench decision at the conclusion of the hearing or, at the option of the presiding judge, no later than _____ business days after receipt of the transcript.

12. [Mandatory] The decision will contain no findings of fact or conclusions of law.

13. [Mandatory] The Board's decision shall be final, conclusive, not subject to reconsideration or appeal, and may not be set aside, except for fraud. The decision shall have no precedential value.

14. Each party will bear its own fees and expenses, including but not limited to attorney and agent fees and compensation for witnesses, incurred incidental to the ADR proceeding.

15. [Mandatory] Any Equal Access to Justice Act application in this appeal shall be considered to have been submitted subject to the terms of this agreement and shall be governed by the agreement's terms (including ¶ 13) and decided in a like summary manner as the decision on the merits.

APPELLANT

GOVERNMENT AGENCY

By: _____

By: _____

Date _____

Date _____