

14 December 1993

[NOTE: 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 the Board's "Notice Regarding 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 13 and 14, however, are key features of the Summary Trial with Binding Decision Method of ADR. In all cases consultation with the presiding judge is encouraged.]

SAMPLE

AGREEMENT TO UTILIZE THE  
PROCEDURE OF SUMMARY TRIAL WITH BINDING DECISION  
UNDER THE ASBCA'S "NOTICE REGARDING  
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 for][Government for] in the amount of \$ \_\_\_\_\_ ; and

WHEREAS, the parties wish to resolve the appeal by alternative dispute resolution, specifically summary trial with binding decision, under the Contract Disputes Act; and

WHEREAS, the ASBCA is authorized to resolve disputes by alternative disputes resolution under its Charter and the Contract Disputes Act; 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 Rule 4 or as exhibits no later than \_\_\_\_\_ ;

[NOTE: The parties may agree to have the appeal decided on the documentary record in accordance with ASBCA Rule 11. If so, such procedure may be provided in additional paragraph(s) and should include the concepts in ¶¶ 12-14 below modified as may be necessary. If the parties seek an oral hearing on the appeal, the following ADR paragraphs should be considered:]

4. Each party's hearing presentation will be limited to \_\_\_\_\_ hours [day], 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. [A very brief (three to five page) prehearing submission is often useful to the presiding judge.]

8. A transcript of the proceedings will be prepared. [Preparation of a transcript is waived.]

9. 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;

10. The hearing on this appeal is scheduled for \_\_\_\_\_ day(s), namely:  
;

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

a. \_\_\_\_\_ ;

b. \_\_\_\_\_ ;

c. \_\_\_\_\_ ;

d. \_\_\_\_\_ ; and

e. [Other issues, if any]

12. 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 [or conclusion of the hearing if no transcript].

13. The decision will contain no findings of fact or conclusions of law.

14. 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.

APPELLANT

GOVERNMENT AGENCY

By:

By:

Dated

Dated