

**THE CONTRACT AND CONTRACT DOCUMENTS ARE SUBJECT TO
ARBITRATION PURSUANT TO THE SOUTH CAROLINA
UNIFORM ARBITRATION ACT
(SOUTH CAROLINA CODE SECTION 15-48-10, ET SEQ.)**

1.01 Agreement to Arbitrate Disputes:

- A. *Arbitration of Disputes:* Subject only to satisfying the mediation requirement set forth herein, all disputed matters between the South Carolina State Ports Authority (“Authority”) and the contracting party (“Contracting Party”) are subject to final and binding resolution pursuant to the South Carolina Uniform Arbitration Act, set forth at S.C. Code Ann. § 15-48-10, et seq. (“SCUAA”) and further subject to the provisions of this Arbitration Proceedings Policy (the “Arbitration Agreement”). If in any case or dispute it should be determined for any reason that the SCUAA does not apply to any matter in controversy between them, Contracting Party and Authority stipulate and agree that the contract between them (the “Contract”) and the contract documents (“Contract Documents”) are subject to arbitration and the work (“Work”) required of Contracting Party under the Contract and the Contract Documents involves interstate commerce such that the Federal Arbitration Act (“FAA”) shall apply if the SCUAA does not, and all disputes shall remain subject to arbitration pursuant to the provisions of the FAA and this Arbitration Agreement.
- B. SUBJECT TO THE SEVERABILITY PROVISIONS CONTAINED IN SECTION 1.02.K OF THIS ARBITRATION AGREEMENT, IN THE EVENT THIS ARBITRATION AGREEMENT IS DEEMED VOID OR UNENFORCEABLE IN PART OR ITS ENTIRETY FOR ANY REASON OR CAUSE, AUTHORITY AND CONTRACTING PARTY HEREBY AGREE THAT ANY LITIGATION RELATED TO OR ARISING OUT OF THE CONTRACT, THE CONTRACT DOCUMENTS AND ANY EXHIBIT OR INSTRUMENT FORMING A PART THEREOF, OR ARISING FROM OR RELATING TO THE WORK, SHALL BE FILED IN THE STATE COURT OF COMMON PLEAS FOR CHARLESTON COUNTY, SOUTH CAROLINA, WITHIN ANY APPLICABLE STATUTES OF LIMITATION PERIOD. AUTHORITY AND CONTRACTING PARTY HEREBY COVENANT AND AGREE THAT NEITHER OF THEM WILL COMMENCE OR MAINTAIN ANY CLAIM OR ACTION AGAINST THE OTHER IN ANY FEDERAL DISTRICT COURT, AND NEITHER PARTY SHALL HAVE THE RIGHT TO REMOVE ANY CLAIM OR ACTION TO ANY FEDERAL COURT, REGARDLESS OF THE ALLEGED BASIS FOR FEDERAL JURISDICTION (I.E., FEDERAL QUESTION, DIVERSITY, ANCILLARY, “RELATED TO” OR SUPPLEMENTAL JURISDICTION), AND AUTHORITY AND CONTRACTING PARTY HEREBY WAIVE AND RELEASE ANY RIGHT TO BRING OR MAINTAIN ANY CLAIM OR ACTION IN ANY FEDERAL FORUM. AUTHORITY AND CONTRACTING PARTY FURTHER AGREE TO CONDUCT THE TRIAL OF ANY CLAIM OR ACTION IN THE CHARLESTON COUNTY COURT OF COMMON PLEAS AS A “NON-JURY” BENCH TRIAL. AUTHORITY AND CONTRACTING PARTY EACH KNOWINGLY AND VOLUNTARILY WAIVE ALL RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY ON ANY DISPUTE THAT MIGHT ARISE UNDER THIS ARBITRATION AGREEMENT, THE CONTRACT, THE CONTRACT DOCUMENTS, OR WHICH MIGHT OTHERWISE ARISE FROM OR RELATE TO THE WORK.

1.02 Arbitration Procedures

- A. *Purpose*: The purpose of this Arbitration Agreement is to provide a prompt, cost-effective, and efficient manner to resolve any and all disputes between the Authority and Contracting Party as set forth herein.
- B. *Waivers and Consents*: Authority and Contracting Party waive all objections and hereby consent to the following:
1. That Authority and Contracting Party shall adhere to the arbitration procedures set forth in this Arbitration Agreement.
 2. That the arbitration procedures set forth in this Arbitration Agreement shall apply to any dispute or claim that arises out of or that relates to (i) the Contract, including but not limited to the existence, validity, scope, interpretation, or enforcement of the Contract and the Contract Documents, as well as any breach thereof; (ii) the Work, (iii) the project ("Project"), (iv) the existence, scope, validity, and enforceability of this Arbitration Agreement; (V) the arbitrability of any particular claim, dispute, or action, and (v) any subcontract or sub-subcontract, or supplier agreement involved in the Work.
 3. That Authority and Contracting Party, and all subcontractors, sub-subcontractors, material suppliers, vendors, engineers, architects, designers, construction lenders, bonding companies, and all other parties concerned with and involved in the performance of Contract and the Work are bound by this Arbitration Agreement, and that Authority and Contracting Party shall incorporate the requirements of this Arbitration Agreement into any contracts by, between, and among these parties, which contracts are concerned with and involved in the performance of the Contract or involved with the Work, or, in the alternative, shall require all such parties to sign a written document agreeing to be bound by this Arbitration Agreement.
 4. The submission exclusively to an arbitration panel of all issues of substantive and procedural arbitrability.
 5. The exclusive personal and subject matter jurisdiction of an arbitration in the State of South Carolina.
 6. The remand of any claim or action commenced in or removed to federal court to the Charleston County Court of Common Pleas upon the motion of any party, or, in the alternative, to an order compelling arbitration in accordance with this Arbitration Agreement.
 7. That, except as otherwise limited by this Arbitration Agreement, the arbitration panel shall have the power and authority to:

- a. Determine in the first instance the scope of the arbitration panel's remedial authority; and
 - b. Grant relief, including awarding any legal or equitable remedy appropriate in the sole judgment of the arbitration panel.
- C. *Additional Waivers:* Authority and Contracting Party further waive the right to:
1. Seek to enjoin an arbitration;
 2. Commence, maintain, or remove any claim or action arising from or relating to the Contract, the Contract Documents, the Work, or this Arbitration Agreement to a federal court for adjudication on merits under any basis for asserting federal jurisdiction, including such grounds as may exist in connection with the underlying dispute;
 3. Appeal or challenge an interim ruling or interim order of the arbitration panel;
 4. Appeal or challenge a final award of the arbitration panel, except as provided in this Arbitration Agreement; and
 5. Challenge whether an arbitration has been properly held, except as provided in this Arbitration Agreement.
- D. *Appointment of the Arbitration Panel:* In the event of a demand for arbitration by either Authority or Contactor, the parties agree to engage a panel of three (3) arbitrators (the "Panel") as follows:
- The Authority shall appoint one (1) arbitrator and the Contracting Party shall appoint one (1) arbitrator. The two (2) arbitrators so appointed shall designate a third arbitrator.
- E. *Fees and Expenses.* Each party to the arbitration proceeding shall share equally in the Panel's fees. A party shall pay its portion of the Panel's estimated fees within thirty (30) days of written notice from the Panel setting forth the amount due. The Panel's award will include any additional fees incurred by the Panel, and each party shall pay its portion of the additional fees within thirty (30) days of receipt of the Panel's award. The Panel shall have the authority to incur expenses only as agreed to by the parties, provided, however, that normal and customary expenses for mileage reimbursements shall not require preapproval. The Panel shall provide written notice to each party fifteen (15) days prior to incurring any expense. A party's failure to object in writing to the notice of the expense prior to the expiration of the fifteen-day period shall constitute that party's consent to the expense. Each party to the proceeding shall share equally in the expenses incurred by the Panel. A party shall pay its portion of the expense within thirty (30) days of receipt of said notice.

F. *Commencing a Demand for Arbitration:* The following procedures shall apply to commencing a demand for arbitration:

1. Mandatory Pre-arbitration Procedures. Unless each party waives in writing the following procedures and elects to proceed directly to arbitration, the following procedures shall be satisfied prior to a demand for arbitration being made:
 - a. First, Authority, Contracting Party and any other parties involved in the claim shall, within thirty (30) days after the submission of a claim or as soon thereafter as possible, meet and confer in a good faith effort to resolve the claim. Such meeting shall involve persons with full authority to make binding decisions upon each of the Parties involved in the claim. Any party may, at their option, have counsel present for the meeting, at their own cost. If an agreement is reached resolving the claim in whole or in part, the agreement shall be reduced to a writing signed by all parties to such agreement.
 - b. Second, if the above-described meeting of the parties does not resolve the claim in full, Authority, Contracting Party, and other parties involved in the claim shall participate in a non-binding mediation settlement conference conducted by a third-party neutral knowledgeable with law applicable to the matter and the issues involved in the claim. If the parties are unable to agree upon the selection of a neutral, any party may apply to the Charleston County Court of Common Pleas for the appointment of a mediator, which appointment shall be final. All parties participating in the mediation shall share equally the cost of the neutral. The mediation shall take place in Charleston County, South Carolina.
 - c. Neither Authority nor Contracting Party shall file, serve, or otherwise commence or maintain any demand for arbitration against the other until the foregoing pre-suit dispute resolution procedures have been fully satisfied or waived in writing. Authority and Contracting Party agree that any lawsuit filed prior to completion of the pre-suit meeting and pre-suit mediation processes shall be stayed until such pre-suit processes have been completed in manner provided above.
2. The Arbitration Demand. Upon satisfaction or written waiver of the foregoing requirements, a demand for arbitration may be filed in writing with the other party to the Contract, and a copy will be sent to the Authority's Chief Financial Officer for information. The demand for arbitration shall be made within the sixty (60) days of an impasse declared by the mediator, or the written waiver of the same, and in no event will any such demand be made after the date when institution of legal or

equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.

3. Within thirty (30) days after receipt of a demand for arbitration, the parties shall confer and select the Panel in manner provided herein.

G. *Hearing and Discovery Procedures:* The following procedures shall apply to the arbitration:

1. Within fifteen (15) days of the Panel's acceptance of their appointments, or as soon thereafter as the Panel determines appropriate, the Panel shall appoint a time and place for a hearing, which shall be held in Charleston County, South Carolina, unless the parties to the arbitration agree otherwise in writing.
2. The Panel may, upon a party's request or at the Panel's discretion, set an expedited schedule for the parties to exchange limited discovery relevant to the arbitration, as follows:
 - a. Parties may request documents or information from any party by serving a written request on the party. Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require narrative answers or fact finding. Standard interrogatories are generally not permitted in the arbitration.
 - b. Unless the parties agree otherwise, within thirty (30) days from the date a discovery request is received, the party receiving the request must either:
 - 1) Produce the requested documents or information to all other parties by serving the requested documents or information by first-class mail, overnight mail service, overnight delivery service, hand delivery, or email;
 - 2) Identify and explain the reason that specific requested documents or information cannot be produced within the required time, state when the documents will be produced, and serve this response on all parties and file this response with the Panel; or
 - 3) Object, as provided below, and serve this response on all parties and file this response with the Panel.
 - c. A party must act in good faith when complying with the discovery procedure of this rule. "Good faith" means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document.
 - d. If a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled "redacted."

- e. If a party objects to producing any document or information requested under the discovery procedure outlined above, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties. Any objection not made within the required time is waived unless the Panel determines that the party had substantial justification for failing to make the objection within the required time. In making any rulings on objections, arbitrators may consider the relevance of documents or discovery requests and the relevant costs and burdens to parties to produce this information.
 - f. A party may make a motion asking the Panel to order another party to produce documents or information if the other party has:
 - 1) Failed to comply with the discovery procedure outlined above; or
 - 2) Objected to the production of documents or information pursuant to the procedure outlined above.
 - g. All discovery shall be completed at least fifteen (15) days prior to the scheduled arbitration hearing, unless the parties to the arbitration agree otherwise in writing and the Panel accepts the parties' agreement.
- 3. Each party shall be entitled to present evidence relevant to the arbitration, and to cross-examine witnesses appearing at the hearing. Documents and testimony shall be presented in the order, manner, and degree that the Panel deems most efficient and probative. The Panel shall determine the amount of evidence to be presented, and may limit the presentation of any documentation or testimony deemed irrelevant or cumulative.
 - 4. The Panel may make such rulings, including rulings of law, and issue such orders or impose such sanctions as the Panel deems proper to resolve the arbitration in a timely, efficient, and orderly manner. The Panel may resolve the arbitration on the evidence produced at the hearing notwithstanding the failure of a party duly notified to appear or participate in the hearing.
 - 5. The Panel shall have the power to administer oaths and may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence. The Panel shall have the power to issue subpoenas, *provided, however*, that the Panel shall not have the authority to permit a deposition to be taken by any party.

H. Awards:

- 1. The Panel will use reasonable efforts to issue a decision and any award within one hundred twenty (120) days of the Panel's acceptance of the appointment, but shall not lose jurisdiction to fully adjudicate the matter should the decision and award

take longer. The final award must be in writing, signed by each member of the Panel, and provided to each party. The final award shall set forth the Panel's reasoning for the decision, unless the parties otherwise agree in writing prior to the start of the arbitration hearing.

2. The Panel shall have the power to make any award, legal and/or equitable in nature, which the Panel deems appropriate. In making the final award, the Panel may make rulings on any issue of law and fact relevant to the arbitration proceeding.
- I. *Challenges:*
1. A challenge to a final award may be filed exclusively in the South Carolina Court of Common Pleas located in Charleston County, South Carolina.
 2. A challenge to a final award must be filed with the Court within ninety (90) days of the issuance of the final award.
 3. A final award may only be vacated or altered upon one or more of the following grounds:
 - a. The award was procured by corruption, fraud, or undue means;
 - b. There was evident partiality or corruption in an arbitrator;
 - c. A member of the Panel is guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
 - d. The Panel exceeded the powers provided in this Arbitration Agreement, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
- J. *Confirmation of Final Award:* Any party shall be entitled to seek confirmation of the final award by filing such request with the South Carolina Court of Common Pleas located in Charleston County, South Carolina, upon the expiration of the period within which a challenge may be taken pursuant to Section 1.02.I of this Arbitration Agreement.
- K. *Severability and Amendment.* This Arbitration Agreement represents a separate and severable agreement to arbitrate disputes. Additionally, each provision of this Arbitration Agreement is intended to be severable. If any term or provision in this Arbitration Agreement is held by a court of law to be in violation of an applicable local, state or federal ordinance, statute, law, administrative or judicial decision, public policy, or for any other reason, and if such court should declare such provision of this Arbitration Agreement to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest extent that is legal,

valid and enforceable, the remainder of this Arbitration Agreement shall be construed as if such illegal, invalid, unlawful, void, voidable, or unenforceable provision was not contained herein, and the rights, obligations, and interests of the parties under the remainder of this Agreement shall continue in full force and effect. If any provision is held to be unenforceable, the court making such determination shall have the power to, and shall, modify such provision to the minimum extent necessary to make such provision, as so modified, enforceable, and such provision shall then be applicable in such modified form. This Arbitration Agreement shall not be amended except by a written addendum signed by both Authority and Contracting Party and affixed as an exhibit to this Arbitration Agreement.

EFFECTIVE DATE: March 21, 2023