

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

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Law

**NEGOTIATION AND DISPUTE
RESOLUTION PROGRAM**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements Air Force Policy Directive 51-12, *Negotiation and Dispute Resolution*. It establishes the Air Force Negotiation and Dispute Resolution (NDR) Program and procedures for resolving disputes in the Air Force. It assigns responsibility for carrying out the program at Headquarters, Major Commands (MAJCOMs), Direct Reporting Units (DRUs), and Field Operating Agencies (FOAs). It also includes material in appendixes that MAJCOM, DRU and FOA Commanders, Vice Commanders, or designees should consider when fulfilling their responsibilities, including minimum qualifications and standards of conduct for Air Force mediators and other neutrals, the rules of confidentiality applicable to Alternative Dispute Resolution (ADR) proceedings in the Air Force, performance measurements and evaluations to assess the effectiveness of the NDR Program in resolving workplace disputes, and best practices for the establishment of Command-level workplace NDR programs. Although this publication is placed in the 51 (Law) series, it affects organizations outside the Office of the General Counsel and the Judge Advocate General's Corps. This publication applies to all activities in the Department of the Air Force, Air Force Reserve Command units, and Air National Guard (ANG) units on federal active duty status under Title 10, U.S. Code. This publication does not apply to contractors, non-federalized ANG units in a military status under Title 32 of the U.S. Code, which are subject to Chief National Guard Bureau Instruction (CNGBI) 0402.01, *National Guard Alternative Dispute Resolution*, or the Civil Air Patrol. This publication may be supplemented at any level, but all supplements must be routed to Deputy General Counsel of the Air Force (Contractor Responsibility & Conflict Resolution (SAF/GCR) for coordination prior to certification and approval. When a requirement is mandated for compliance at the wing level, the requirement is tiered following the sentence/paragraph that drives the requirement. The authorities to waive wing/unit level requirements are identified with a Tier number ("T-0, T-1, T-

2, T-3”) following the compliance statement. See Air Force Instruction (AFI) 33-360, *Publications and Forms Management*, for a description of the authorities associated with Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority or alternatively, to the requestor’s commander for non-tiered compliance items. This instruction requires the collection and/or maintenance of information protected by the Privacy Act of 1974 authorized by Title 5, C.F.R. 293, 10 U.S.C. § 8013, and Executive Order 9397 (SSN), as amended by Executive Order 13478. The applicable SORN F051 SAFGC A, *Air Force Mediator Utilization Management Records*, is available at: <http://dpclo.defense.gov/Privacy/SORNs.aspx>. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule, located in the Air Force Records Information Management System. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the Air Force Form 847, *Recommendation for Change of Publication*; route every Air Force Form 847 from the field through MAJCOM, DRU and FOA Commanders, Vice Commanders, or designees.

SUMMARY OF CHANGES

This publication has been substantially revised and should be reviewed in its entirety. This revision identifies tiered waiver authorities for wing level, DRU, and FOA compliance requirements in accordance with AFI 33-360. The title of the AFI and the program it establishes has been broadened to prepare Airmen to reconcile multiple perspectives and solve problems by making negotiation an Air Force-wide capability. This is intended to enable Airmen to appropriately manage and resolve conflict as early as possible concerning issues in controversy encountered in the performance of their duties, including disputes with persons representing organizations outside the Air Force. In this regard, the program it prescribes supersedes those established under AFI 51-1201, *Conflict Management and Alternative Dispute Resolution in Workplace Disputes*, 17 March 2014, and Air Force Manual 51-1201, *Alternative Dispute Resolution of Contract Controversies, Claims, Protests, Disputes, and Transactional Disputes*, 8 November 2016. SAF/GCR leadership changes and shift in responsibilities have been noted. In accordance with Headquarters Air Force Mission Directive (HAF MD) 1-14, SAF/GCR is responsible for negotiation and dispute resolution policy, programs, and developing associated educational resources. Overall, guidance regarding the use of ADR in Air Force disputes is reduced consistent with the Secretary of the Air Force’s publications initiative. Non-directive information no longer included in this AFI are referenced in Appendixes 1, 2, 3, and 4.

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1. Overview. In accordance with the *Administrative Dispute Resolution Act of 1996* (ADRA) and the policy established in DoD Instruction 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*, this AFI establishes the Air Force Negotiation and Dispute Resolution (NDR) Program.

2. Roles and Responsibilities

2.1. The Deputy General Counsel of the Air Force (Contractor Responsibility & Conflict Resolution (SAF/GCR). SAF/GCR will:

2.1.1. In accordance with HAF MD 1-14, lead the Air Force NDR Program.

2.1.2. In appropriate cases and mission areas, promote and expand the use of ADR in accordance with DoDI 5145.05 and the ADRA.

2.1.3. Promote and expand the use of interest-based negotiation skills by Airmen to establish negotiations as an Air Force-wide capability.

2.1.4. Establish standards of conduct for mediation and the use of related ADR techniques, including the utilization of neutrals, for mediators and parties.

2.1.5. In accordance with HAF MD 1-14, develop best practices and related resources for Command-level NDR programs.

2.1.6. Receive ADR data from commanders and provide Department of Defense (DD) Form 2815, *Alternative Dispute Resolution (ADR) Annual Report*, to the DoD Deputy General Counsel (Legal Counsel) (DGC(LC)) in accordance with DoDI 5145.05.

2.1.7. Develop and implement policy and guidance for the use of voluntary binding arbitration, in accordance with 5 U.S.C. § 575(c) of the ADRA and HAF MD 1-14, as appropriate.

2.1.8. Serve as the Department of the Air Force dispute resolution representative to the Defense Equal Opportunity Management Institute (DEOMI).

2.1.9. Work with appropriate Air Force organizations, including but not limited to, the office of the Assistant Secretary of the Air Force (Acquisition, Technology, and

Logistics, SAF/AQ); the Assistant Secretary for Manpower and Reserve Affairs (SAF/MR); the Assistant Secretary of the Air Force (Installations, Environment and Energy, SAF/IE); the Assistant Secretary of the Air Force (Financial Management and Comptroller, SAF/FM); the Deputy Chief of Staff, Logistics, Engineering and Force Protection (AF/A4); the Administrative Assistant to the Secretary (SAF/AA); the Assistant Vice Chief of Staff (AF/CV); the Deputy Chief of Staff for Manpower, Personnel, and Services (AF/A1); the Judge Advocate General (AF/JA); and divisions of the Office of the Air Force General Counsel to:

- 2.1.9.1. Periodically revise programmatic objectives, as appropriate, for the Air Force NDR Program.
 - 2.1.9.2. Develop appropriate negotiation and dispute resolution education resources through collaboration with the Air Force Negotiation Center and other mission partners.
 - 2.1.9.3. Support the development and implementation of the Air Force NDR Program.
 - 2.1.9.4. Identify appropriate changes to Air Force publications and secure needed resources to implement and facilitate the use of negotiations and dispute resolution processes.
- 2.2. The Judge Advocate General (AF/JA). AF/JA will:
- 2.2.1. In appropriate cases, promote and expand the use of ADR in accordance with DoDI 5145.05, the ADRA, and HAF MD 1-14.
 - 2.2.2. In appropriate cases, promote and expand the use of interest-based negotiation skills by Airmen.
 - 2.2.3. Collaborate, as appropriate, with Commanders and SAF/GCR on the reporting of ADR data as provided in this instruction and HAF MD 1-14.
 - 2.2.4. In accordance with this instruction and HAF MD 1-14, provide recommendations to SAF/GCR on Air Force NDR policy and procedures.
 - 2.2.5. In accordance with HAF MD 1-14, collaborate with SAF/GCR on the implementation of Air Force NDR policy.
- 2.3. The Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics, SAF/AQ); the Deputy Under Secretary of the Air Force (International Affairs, SAF/IA); the Assistant Secretary of the Air Force (Installations, Environment and Energy, SAF/IE); and the Assistant Secretary for Manpower and Reserve Affairs (SAF/MR). SAF/AQ, SAF/IA, SAF/IE, and SAF/MR will:
- 2.3.1. In appropriate cases, promote and expand the use of ADR in accordance with DoDI 5145.05 and the ADRA.
 - 2.3.2. Promote and expand the use of interest-based negotiation skills by all Airmen to establish negotiations as an Air Force-wide capability.
- 2.4. MAJCOMs, DRUs and FOAs. Each MAJCOM, DRU and FOA Commander, Vice Commander, or designee will:

- 2.4.1. In appropriate cases and mission areas, promote and expand the use of ADR in accordance with DoDI 5145.05 and the ADRA. (T-1)
- 2.4.2. Promote and expand the use of interest-based negotiation skills by Airmen under their command. (T-1)
- 2.4.3. Collect and report ADR data at their respective commands using DD Form 2815. DD Form 2815 shall be routed by commanders to SAF/GCR annually no later than 1 November, to enable Air Force compliance with DoDI 5145.05 reporting requirements. (T-1)
- 2.4.4. Adhere to the procedural requirements in Appendix 2 regarding the utilization of workplace neutrals. (T-1)
- 2.4.5. Consider establishing NDR programs (or delegating the authority to establish such programs to subordinate commanders) tailored, as appropriate, to mission needs and resource constraints. In accordance with HAF MD 1-14, such programs may be developed through collaboration with SAF/GCR. Best practices and related guidance for workplace NDR programs can be found in Appendix 3 and the Air Force NDR Program Portal at www.ndr.af.mil.
- 2.4.6. Evaluate mission-driven requirements within their respective commands, and when necessary, ensure appropriate personnel, including First Sergeants, receive training and education in negotiations and ADR.

3. Procedural Standards and Resources

- 3.1. For procedures regarding the use of neutrals, including workplace mediators, and the Air Force standards of conduct and the ADRA confidentiality requirements that pertain to them, see Appendix 2.
- 3.2. Regulations regarding the use of ADR in acquisition can be found in the Air Force Federal Acquisition Regulation Supplement (AFFARS) (e.g. Part 5333, *Protests, Disputes, and Appeals* and Subpart 5301.91, *Ombudsman Program*). Additional guidance can be found in the *ADR Deskbook for Acquisition Professionals* at www.ndr.af.mil, along with resources regarding other transactional disputes (e.g., environmental, international).
- 3.3. Command compliance with DoDI 5145.05 ADR data reporting requirements may be accomplished electronically. For guidelines regarding the electronic routing of such data via the NDR Reporting System, see www.ndr.af.mil. Recommended guidelines for the tracking and reporting of data in workplace disputes can be found in Appendix 3.
- 3.4. Best practices for the establishment of Command-level Workplace NDR Programs can be found in Appendix 4.

THOMAS E. AYRES
General Counsel

ATTACHMENT 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Title 5 U.S.C. § 552a, *Privacy Act*, 21 November 1974

Title 5 U.S.C. § 571, *et seq.*, *Administrative Dispute Resolution Act of 1996*, 19 October 1996

HAF MD 1-14, *General Counsel and The Judge Advocate General*, 29 December 2016

AFPD 51-12, *Negotiation and Dispute Resolution*, 5 June 2018

AFI 33-360, *Publications and Forms Management*, 1 December 2015

AFMAN 33-363, *Management of Records*, 1 March 2008

AFFARS, Part 5333, *Protests, Disputes, and Appeals*, and Subpart 5301.91, *Ombudsman Program*

CNGBI 0402.01, *National Guard Alternative Dispute Resolution*, 24 July 2015

Prescribed Forms

DD Form 2815, *Alternative Dispute Resolution (ADR) Annual Report*

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Terms

Alternative Dispute Resolution (ADR)—Any procedure that is used to resolve issues in controversy by mutual agreement of the parties, including but not limited to conciliation, facilitation, mediation, fact-finding, minitrials, advisory arbitration, and the use of ombuds, or any combination thereof (5 U.S.C. § 571(3)). ADR proceedings utilize the services of a neutral third party to assist the parties in resolving their dispute.

Confidentiality—As used in this AFI, refers to the protection from voluntary or compulsory disclosure, afforded by the Administrative Dispute Resolution Act of 1996, to certain dispute resolution communications given in confidence for the purposes of a dispute resolution proceeding. See Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 574.

DEOMI—DEOMI's mission is to develop and deliver world-class human relations education, training, research, and innovative solutions to enhance total force readiness.

Dispute Resolution—The process of settling disagreements to include adjudication, such as litigation or arbitration, or alternative means, such as facilitation, mediation, conciliation, or negotiation.

Workplace Dispute—A formal or informal claim or issue in controversy that arises out of an existing or prospective employment relationship between the Air Force and its civilian employees, applicants for employment, or military members, or which otherwise materially affects conditions of employment for Air Force civilian employees, for which a remedial process

is authorized by law, regulation, or policy. For purposes of application of ADR principles, a workplace dispute may be written or oral.

Workplace Neutral—An individual designated or appointed to assist the parties in resolving one or more workplace disputes. A neutral may be a military member or civilian employee of the Federal Government or any other individual, including a contractor hired to provide services as a neutral. Anyone serving as a neutral in an Air Force workplace dispute must not have an official, financial, or personal conflict of interest in any issue in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve. Air Force civilian employees and military members serving as mediators in Air Force workplace disputes must also meet minimum qualifications as set forth in Appendix 2, Section 1. For purposes of determining whether communications are confidential, the term “neutral” also includes ADR intake or other administrative personnel designated and identified by a MAJCOM, DRU, or FOA Commander, Vice Commander or designee as a neutral for the purpose of taking information from the party or parties to a dispute to assist them in deciding whether to use a dispute resolution proceeding to resolve the dispute.

ATTACHMENT 2

APPENDIX 2

GUIDANCE ON THE USE OF NEUTRALS, THE AIR FORCE STANDARDS OF CONDUCT AND ADRA CONFIDENTIALITY REQUIREMENTS FOR THIRD-PARTY NEUTRALS

Section 1. Appointment and Qualifications of Air Force Mediators

MAJCOM, DRU, and FOA Commanders, Vice Commanders and designees, are granted wide latitude in meeting their responsibilities under AFI 51-1201. If they decide to use Air Force mediators, they should determine and execute the best means for recruiting and making available qualified mediators (or other types of neutrals), based on need and availability. At installations that do not have a history of significant workplace dispute activity, in lieu of maintaining a roster of internal mediators, mediators or other third-party neutrals may be obtained from other sources.

Installation commanders should seek ‘volunteers’ to perform mediation duties, vice ‘appointing’ them; further, a recommendation from the individual’s first line supervisor and commander is highly recommended, attesting to the individual’s fitness to perform such duties, taking into consideration the person’s professional manner and demeanor, ability to speak and write very well, and innate ability to engage others in conversation, among other things. While on appointment, and selected to perform a mediation, the individual’s duty should be recognized as an “in lieu of” duty/responsibility taking precedence over normal day-to-day duties/responsibilities. Once a specific mediation is completed, the individual returns to normal duties until assigned to perform another mediation. Individuals who receive Air Force-provided mediation training generally should be made available for mediation duties, following appropriate on-the-job training. Exceptions may be made for individuals who receive mediation training in order to manage an ADR program or provide ADR support. Air Force mediators on active rosters should undergo a minimum of 8 hours of mediation refresher training per fiscal year, including at least 1 hour of training in standards of conduct, confidentiality, and/or drafting settlement agreements. Commanders, vice commanders and designees also should institute mechanisms for ensuring that mediators receive annual refresher training on duty time.

Commanders, vice commanders and designees should appoint mediators in writing, and assign them to specific cases once appointed. Moreover, before an Air Force mediator can mediate an Air Force workplace dispute as a “lead,” or solo, mediator, he or she should meet the following minimum qualification requirements:

1. Successful completion of the Air Force Basic Mediation Course or a comparable mediation training program consisting of at least 30 hours of combined classroom instruction and role-play exercises. SAF/GCR sponsors two basic mediation courses at Maxwell AFB each year. These courses are 4 days long.
2. Co-mediation in three or more disputes in which the mediator is observed and evaluated by an experienced lead mediator.
3. Appointment as a mediator by commanders, vice commanders or designees.

For EEO complaint mediations, mediators should understand federal agency EEO complaint procedures contained in 29 C.F.R. Part 1614, and EEOC Management Directive 110. Commanders, vice commanders and designees should ensure that individuals assigned to mediate EEO complaints have the proper training and/or qualifications to perform such duties.

Finally, the Air Force offers certification of Air Force mediators at four different levels of proficiency based on education, training and experience. The four levels are: Level I (Basic); Level II (Intermediate); Level III (Advanced); and Level IV (Master). SAF/GCR is the certification authority for all levels. Certification at any level is voluntary, and is not required to mediate or otherwise serve as a third-party neutral in an Air Force workplace dispute, except as follows:

1. An Air Force mediator who evaluates another mediator for purposes of qualifying the mediator to meet basic qualification standards or to obtain Level I (Basic) certification should be certified at Level II (Intermediate) or higher.
2. SAF/GCR may only fund an Air Force mediator to travel to another location on Air Force NDR Program funds to conduct mediation if the mediator is certified at Level II (Intermediate) or higher.

Additional information regarding the appointment and qualifications of Air Force mediators and the Air Force Mediator Certification Program can be found at www.ndr.af.mil.

Section 2. Standards of Conduct for Third Party Neutrals

If MAJCOM, DRU, and FOA Commanders, Vice Commanders or designees decide to use third-party neutrals to meet their responsibilities under AFI 51-1201, the Air Force Standards of Conduct apply with equal force to any individual who serves as a third party neutral in Air Force dispute resolution proceedings, regardless of ADR process, technique employed, or type of dispute. In this regard, all third party neutrals must be familiar with and adhere to the following standards of ethical conduct.

1. Self-Determination. A neutral shall conduct ADR proceedings on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of ADR, including selection of the neutral, process design, participation in or withdrawal from the process, and outcomes. A neutral shall not undermine party self-determination for any reasons such as higher settlement rates, egos, or outside pressures.

2. Impartiality. A neutral shall decline to serve if he or she cannot conduct the proceeding in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice. A neutral shall conduct the proceeding in an impartial manner and avoid conduct that gives the appearance of partiality. If at any time a neutral is unable to conduct an ADR proceeding in an impartial manner, the neutral shall withdraw from the proceeding. In addition, a neutral shall not act with

partiality or prejudice based on a participant's personal characteristics, background, values or beliefs, or performance at the mediation, or for any other reason. Nor shall a neutral give or accept a gift, favor, loan or other item of value that raises a question as to the neutral's actual or perceived impartiality, or that is inconsistent with the neutral's ethical obligations under the DoD Joint Ethics Regulation, DoDD, 5500.07, *Standards of Conduct*, or applicable federal statutes and regulations governing ethical conduct of federal employees.

3. Conflicts of Interest. A neutral shall avoid a conflict of interest or the appearance of a conflict of interest before, during and after conducting ADR proceedings. A conflict of interest can arise from the involvement by a neutral with the subject matter of the dispute or from any relationship between the neutral and any participant in the proceeding, whether past or present, personal or professional, that reasonably raises a question of the neutral's impartiality. In this regard:

- (a) A neutral shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, or which would reasonably create the appearance of a conflict of interest, for a neutral.
- (b) A neutral also shall disclose, as soon as practicable, all actual and potential conflicts of interests that are reasonably known to the neutral and could reasonably be seen as raising a question about the neutral's impartiality.
- (c) If a neutral learns any fact after accepting an ADR assignment that raises a question with respect to the neutral's service creating a potential or actual conflict of interest, or which would reasonably create the appearance of a conflict of interest, the neutral shall disclose it in writing to the parties as soon as practicable. After disclosure, if all parties agree, the neutral may proceed with the proceeding.
- (d) If a conflict of interest can reasonably be viewed as undermining the integrity of the ADR proceeding or violating the quality of the process, the neutral shall withdraw from the proceeding or decline to proceed further regardless of the expressed desire or agreement of the parties to the contrary.
- (e) A neutral shall not conduct an ADR proceeding concerning an EEO complaint if the neutral previously investigated or counseled the complainant with respect to the same or a related complaint.
- (f) A neutral shall not advise, counsel, or represent any party in any future proceeding with respect to the subject matter of the ADR proceeding, nor shall the neutral offer advice, guidance or counsel to any official responsible for approving a settlement of the dispute that was the subject matter of the proceeding over which the neutral presided.
- (g) An Air Force neutral shall not accept an ADR assignment that would conflict with his or her regularly assigned duties.

4. Competence. A neutral shall accept a dispute resolution assignment only when he or she has the necessary competence to satisfy the reasonable expectations of the parties. If a neutral, before or during the course of an ADR proceeding, determines that he or she cannot conduct the proceeding competently, the neutral shall take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

5. Confidentiality. A neutral shall maintain the confidentiality of all information obtained during the ADR proceeding, unless otherwise agreed to by the parties or disclosure is required by applicable law or policy, including the confidentiality provisions of 5 U.S.C. § 574 of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571 *et seq.* (October 19, 1996)(ADRA). In addition:

(a) A neutral shall not communicate to any non-participant information about how the parties acted during the proceeding or what they said, unless disclosure is authorized or required by law. In all cases, the neutral may report whether the parties appeared as scheduled, whether or not the parties reached resolution, and the terms of that resolution as reflected in the settlement agreement, unless the settlement agreement contains a confidentiality clause prohibiting disclosure of the terms.

(b) A neutral who meets with the parties separately in private session (caucus) shall not convey directly or indirectly to any other person, any information that was obtained during the private session without the consent of the party who disclosed the information.

(c) Information indicating fraud, waste and abuse, criminal misconduct, or threats of violence may be subject to disclosure, notwithstanding confidentiality. The neutral shall advise the parties of this before taking their opening statements. Prior to disclosing, outside the ADR proceeding, any dispute resolution communication that may indicate fraud, waste and abuse, criminal misconduct, or threat of violence, the neutral shall consult the commander, vice commander or his or her designee and take appropriate action in accordance with the confidentiality requirements set forth in Section 3 below.

(d) A neutral in an Air Force dispute shall also comply with the confidentiality provisions of the ADRA, as more fully set forth in Section 3 below.

6. Quality of the Process. A neutral shall conduct the ADR proceeding in accordance with these standards of conduct and in a manner that promotes diligence, timeliness, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants. Moreover:

(a) A neutral shall ensure that the ADR proceeding is scheduled at a date, time and place that the neutral and the parties can devote their full, undivided attention to the matters at hand.

(b) A neutral shall work with the parties to control the number of persons participating in the ADR proceeding to assure proper decorum and full and open discussion of the issues.

(c) A neutral serving as a mediator shall not knowingly misrepresent any material fact or circumstance during the course of mediation, nor conduct a proceeding other than mediation but label it mediation to gain the protection of rules, statutes or other governing authorities pertaining only to mediation.

(d) A neutral serving as a mediator shall not convert mediation into a non-mediation dispute resolution process, or a facilitative mediation into an evaluative mediation, without the informed consent of the parties. A neutral serving as a mediator who assumes a dispute resolution role that requires a greater degree of subject matter expertise, such as early neutral evaluation, shall have sufficient expertise to meet the standard of competence or shall withdraw from the mediation.

(e) A neutral shall withdraw from and terminate an ADR proceeding that is being used to contravene Air Force or DoD directives or to further criminal conduct. Depending on the circumstances, and notwithstanding confidentiality, the neutral may be required to report the events leading up to his or her withdrawal and termination of the proceeding.

(f) A neutral serving as a mediator is responsible for assuring the self-determination of the parties during mediation. If during the course of a mediation a party appears to be having trouble understanding the process, issues, or options for settlement, or is having difficulty participating in the mediation, or is otherwise acting in a manner raising a reasonable question whether the party has the requisite capacity to comprehend the proceedings and to participate freely therein, the neutral serving as a mediator shall explore the circumstances of the party's behavior and potential accommodations or adjustments to correct the condition.

(g) If a neutral reasonably believes that a participant's conduct, including that of the neutral, jeopardizes conducting the ADR proceeding consistent with these standards of conduct, the neutral shall take appropriate steps including, if necessary, postponing, withdrawing from, or terminating the ADR proceeding.

Section 3. ADRA Confidentiality Requirements for Third-Party Neutrals

Congress has recognized that confidentiality is essential for ADR processes to be effective (see ADRA, 5 U.S.C. § 574). Accordingly, the ADRA provides confidentiality protection for certain "dispute resolution communications" made in the course of ADR proceedings. The Air Force vigorously supports the confidentiality of dispute resolution communications whenever it is consistent with the ADRA to do so. The following are the criteria for confidentiality protection.

1. Threshold criteria. To warrant protection as confidential, an oral or written communication must meet three threshold criteria:

(a) It must be made during participation in the dispute resolution proceeding by specified parties, i.e., the time period between the appointment or designation of a neutral and the termination of the proceeding, either by an executed settlement agreement or an impasse declared by the neutral (**Note:** 5 U.S.C. § 574(a) provides that a "neutral in a dispute

resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral.” A “dispute resolution proceeding” is defined as any “alternative means of dispute resolution...in which a neutral is appointed and specified parties participate” (5 U.S.C. § 571(6)). A dispute resolution proceeding is terminated when an enforceable settlement is reached as to all issues or an impasse is declared as to one or more issues in controversy).

(b) It must be made or prepared specifically for the purposes of the dispute resolution proceeding (**Note:** This key restriction on the scope of the ADRA’s confidentiality protections is found in the definition of “dispute resolution communication” which states, at 5 U.S.C. § 571(5), that it covers “any oral or written communication prepared for the purposes of a dispute resolution proceeding...”). (**Note:** 5 U.S.C. § 574(f) states that “Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding”).

(c) It must be made by a party to the neutral in confidence, or generated by the neutral and provided to the parties in confidence (**Note:** The term “in confidence” is defined to mean that the information is provided with the express intent by the source that it not be disclosed, or under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed. (*See* 5 U.S.C. § 571(7)).

2. For purposes of application of confidentiality protection, the term “neutral” includes ADR intake officials and other personnel whose assigned duties include taking information in confidence from a party for the purpose of determining whether to use an alternative means of dispute resolution to resolve issues in controversy.

3. The confidentiality protection conferred by the ADRA does not extend to dispute resolution communications in Military Equal Opportunity complaints or any other purely military personnel matters. In such cases, the scope of confidentiality with respect to communications that would otherwise meet the threshold criteria is entirely a matter of command discretion or Air Force regulatory policy.

4. Application of Confidentiality Protection to Specific Communications. As a general rule, dispute resolution communications that meet the three threshold criteria set forth above are treated as confidential and can be disclosed only if an exception listed below is applicable to the disclosing person.

(a) Exceptions applicable to the neutral (5 U.S.C. § 574(a)(1)-(4)). Notwithstanding confidentiality, the neutral may disclose a dispute resolution communication if:

(1) All parties to the dispute resolution proceeding and the neutral consent to disclosure in writing and, if the communication was provided by a nonparty participant, that participant consents to disclosure in writing;

(2) The communication has already been made public;

(3) The communication is required by statute to be made public (e.g., in response to a Congressional subpoena); however, the neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) A court determines the communication must be disclosed to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the loss of confidentiality.

(b) Exceptions applicable to a party (5 U.S.C. § 574(b)(1)-(7)). Notwithstanding confidentiality, a party may disclose a dispute resolution communication if:

(1) It was made by the party seeking disclosure;

(2) All parties to the dispute resolution proceeding and the neutral consent to disclosure in writing and, if the communication was provided by a nonparty participant, that participant consents to disclosure in writing;

(3) The communication has already been made public;

(4) The communication is required by statute to be made public (e.g., in response to a Congressional subpoena);

(5) A court determines the communication must be disclosed to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the loss of confidentiality;

(6) It is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding, or to the enforcement of such an agreement or award; or

(7) Except for communications generated by the neutral and provided to the parties in confidence, it was made available to all parties in the proceeding. This exception would apply to communications made by a party during joint sessions in which all other parties are present, but would not apply to communications made by the neutral to the parties during joint sessions. Accordingly, communications generated by the neutral to the parties during joint sessions are protected as confidential; communications between the parties themselves are not.

(c) Other exceptions to confidentiality (5 U.S.C. § 574(f)-(i)).

(1) Information that is otherwise discoverable remains discoverable. Merely because the information was presented in the course of a dispute resolution proceeding does not make it confidential.

(2) Dispute resolution communications may be used to resolve a subsequent dispute between a party and a neutral, but the disclosures must be limited to only those necessary to resolve such dispute.

(3) Information from dispute resolution proceedings may be gathered and disclosed for research or educational purposes in cooperation with other agencies, governmental entities, or ADR programs as long as the parties and specific issues in controversy are not identifiable.

(4) Any agreement reached or order issued pursuant to a dispute resolution proceeding may be disclosed under the ADRA. Thus, for example, an agreement to mediate a dispute or a settlement agreement reached as a result of that mediation is not protected from disclosure under the ADRA. However, disclosure or other uses of such an agreement may be restricted by the terms of the agreement itself or by other measures.

5. Understanding of the Parties. To protect the reasonable expectation of the parties in the confidentiality of dispute resolution communications, the neutral conducting the session should explain the confidentiality provisions during opening remarks, and affirmatively establish that the parties understand the provisions. A sample confidentiality clause in a mediation agreement and a mediator's opening statement, including an explanation of confidentiality protection, can be found at www.ndr.af.mil.

6. Waiver of Objection to Disclosure by the Neutral; 15-Day Limitation. If a neutral receives a discovery request or is otherwise compelled by legal process to disclose a dispute resolution communication (including an administrative demand for disclosure asserting as its basis a statutory or other legal right to the communication), the ADRA requires the neutral to make reasonable efforts to notify the parties and any affected nonparties of the demand (5 U.S.C. § 574(e)). Any objection to disclosure is waived if not made within 15 calendar days after notice of the demand for disclosure. Therefore, whenever a neutral receives a demand to disclose a dispute resolution communication it is essential that the neutral immediately notify the commander, vice commander or his or her designee, who will assist the neutral to provide notice of the demand to the parties and any affected nonparty participants. The commander, vice commander or his or her designee will also notify the Staff Judge Advocate or other point of contact in the servicing legal office, which will coordinate the demand with the servicing Labor Law Field Support Center attorney, if applicable, and with SAF/GCR by e-mail (usaf.pentagon.saf-gc.mbx.saf-gcr-workflow@mail.mil). **A neutral shall not disclose communications from ADR proceedings without a written legal determination that disclosure is authorized or required.**

7. Remedy for Violation of Confidentiality Protection. A dispute resolution communication that is disclosed in violation of the ADRA or AFI 51-1201 is not admissible in any proceeding relating to the issues in controversy with respect to which the communication was made (5 U.S.C. § 574(c)).

8. Freedom of Information Act (FOIA). A dispute resolution communication that is confidential under 5 U.S.C. § 574(j) of the ADRA is exempt from disclosure under FOIA, 5 U.S.C. § 552(b)(3).

ATTACHMENT 3**APPENDIX 3****NEGOTIATION AND DISPUTE RESOLUTION PROGRAM PERFORMANCE MEASUREMENTS AND QUALITY ASSURANCE IN WORKPLACE DISPUTES**

1. ADR Performance Metrics. To measure ADR performance, including efforts to settle workplace disputes before an employee receives an unconditional offer to use a qualified third-party neutral, MAJCOM, DRU and FOA Commanders, Vice Commanders, and designees should collect and report in real time the data specified below in the Air Force Negotiation and Dispute Resolution Reporting System and ensure the system is maintained with current information. Additional measurement and reporting requirements also may be established consistent with the overall Negotiation and Dispute Resolution Program goal of encouraging early resolution of disputes. Current information is defined as within 5 business days and, if extenuating circumstances exist, no later than each fiscal year quarter. MAJCOM, DRU and FOA Commanders, Vice Commanders, and designees have overall responsibility for the collection and reporting of ADR data at their installations, and coordinate with other offices, e.g., Equal Opportunity, Civilian Personnel Service, Nonappropriated Fund Human Resources, Staff Judge Advocate, and participating local labor unions, as necessary, to ensure accuracy and completeness.

(A) ADR Early Resolution Rates. Measures the utilization and effectiveness of dispute resolution activities that occur prior to an unconditional offer to the employee to meet with a qualified third-party neutral but which resolve the dispute informally, thus furthering Air Force policy favoring early informal resolution of most disputes. This metric tracks the percentage of total disputes in which an early resolution technique was employed, and the percentage of such cases resolved (settled or dispute unconditionally withdrawn) using that technique. The key to ADR early resolutions is the use of a facilitative interest-based technique at an informal stage of the dispute resolution process. For purposes of this metric, only the following four activities should be tracked and reported. Compliance with the local labor union's representational rights, if applicable, is assumed for each activity.

(1) Informal Military Equal Opportunity complaints and informal EEO pre-complaints in which the counselor facilitates an interest-based discussion between the complainant and the management official to resolve the complaint.

(2) Meetings between the employee and management to resolve a dispute either before or after a grievance is filed under the agency or negotiated grievance procedures in which a non-neutral third party participates to facilitate an agreement between the parties. This third party may be management, such as an Employee Relations specialist, or labor, such as a local labor union steward.

(3) Attempts by an EEO investigator to facilitate settlement between the parties immediately prior to conducting the investigation required by 29 C.F.R. § 1614.106.

(4) Bilateral negotiations between the parties to a workplace dispute in which the negotiators expressly agree to use a structured, interest-based negotiation approach to resolve issues in controversy.

(B) Neutral-Assisted Resolution Rates. Measures the effectiveness of ADR to resolve disputes by comparing the number of resolutions (i.e., settlements or unconditional withdrawals) using a qualified third-party neutral, with the number of disputes in which employees agreed to an unconditional offer to use ADR, and expressing the result as a percentage. The goal for this metric is to resolve at least 70 percent of the disputes in which a qualified third-party neutral is employed. Although this measure is useful at a macro level for gauging the overall effectiveness of the NDR Program at promoting voluntary resolution of disputes, it should not be used in individual cases to pressure parties into settlements to which they would otherwise not agree.

(1) ADR Offer and Acceptance Rates. These metrics measure the percentage of eligible disputes in which an unconditional offer of ADR is made, and the percentage of offers ultimately accepted by employees. Activities should track and report the total number of offers of ADR to employees, and the number of offers accepted by employees.

(a) The ADR Offer Rate is the percentage of total disputes, by category, in which an unconditional offer of ADR is made to the complaining employee. The goal for this metric is to unconditionally offer ADR in at least 75 percent of eligible disputes.

(b) The ADR Acceptance Rate is the percentage of ADR offers that are agreed to by employees. The goal for this metric is acceptance of at least 50 percent of ADR offers. The data reported for this metric may vary depending on whether the reporting activity observes a mandatory participation policy for management.

(2) ADR Timeliness Rates. This metric measures two periods. The first period starts on the date an employee agrees to an unconditional offer of ADR and ends on the date the ADR proceeding begins. The second period starts on the date an employee agrees to an unconditional offer of ADR and ends on the date the ADR proceeding is terminated. An ADR proceeding terminates on the date a settlement agreement is approved, impasse is declared, or a dispute is withdrawn. The goal is an average of 45 calendar days or less for each dispute category and for the aggregate of all reported disputes.

(3) Customer Satisfaction. This metric measures the overall satisfaction of parties in the ADR process and the performance of the neutral as expressed in a voluntary questionnaire (a sample questionnaire can be found at www.ndr.af.mil). The goal is to achieve an overall rating of "Satisfied" or better for the ADR process employed from at least 80 percent of the respondents, and an overall rating of "Good" or better for the neutral from at least 80 percent of the respondents. Due diligence should be exercised in obtaining customer satisfaction feedback from ADR participants as soon as the ADR process is completed.

(C) Data pertaining to ADR early resolution rates, neutral-assisted resolution rates, ADR offer and acceptance rates, and ADR timeliness rates should be maintained and reported for each of the following categories of workplace disputes:

- (1) Agency administrative grievances.
- (2) Grievances filed under a collective bargaining agreement Negotiated Grievance Procedure.
- (3) Merit Systems Protection Board appeals.
- (4) EEO complaints (informal pre-complaints and formal complaints).
- (5) Military Equal Opportunity complaints.
- (6) Unfair Labor Practice allegations and charges.
- (7) Other disputes not meeting the definitions of the foregoing disputes, for which a remedy or resolution is available.

2. Complaints about Mediation Services.

(A) Complaints about mediators or other neutrals should be directed to commanders, vice commanders, or designees. After consulting with the SJA or designee, they should decide whether corrective action is necessary and, if so, what action should be taken. If there is a substantiated complaint alleging misconduct, such as a breach of the standards of conduct, the commander, vice commander, or designee and/or the SJA should consider relieving the mediator of further mediation duties. SAF/GCR should be consulted before a decision to relieve a mediator of his or her mediation duties is made.

(B) Complaints about third-party neutrals under contract with SAF/GCR should be directed to the Air Force NDR Program Office. Complaints should clearly document the facts and circumstances surrounding the incident and request a specific remedy. Action taken will depend on the facts of each case.

3. Records. Records created as a result of the processes prescribed in AFI 51-1201 or this Appendix are maintained in accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with Air Force Records Disposition Schedule, located in the Air Force Records Information Management System. Additional guidance for retention and disposition of Negotiation and Dispute Resolution records is as follows:

(A) NDR Program files. These are files generated in connection with NDR Program management, such as correspondence, statutes and regulations, guidance and policy documents, letters of appointment, program evaluations, reports, statistical analyses, mediator certification files, and other records relating to the overall NDR Program.

(B) ADR case files. These files include records that document ADR proceedings in specific disputes, such as intake forms, ADR agreements, settlement agreements or other documentation of the disposition of the case, written evaluations of the process and/or the neutral, and any other documentation or correspondence relating to the ADR proceeding. If the files pertain to a dispute in which there is an official dispute file, such as an EEO complaint or employee grievance, they become part of the official dispute file and their retention and disposition are governed by the schedules applicable to such files. If there is no official dispute file, these records are treated as ADR case files.

(C) Personal notes. Notes taken by the neutral and the parties and/or their representatives during a dispute resolution proceeding, and which are not made part of the record, are not considered agency records. Personal notes taken by the neutral should be destroyed as soon as practicable, to include after final coordination of a settlement agreement, withdrawal of the case, or a decision by both parties to end the dispute resolution proceeding indefinitely.

4. Procedures Involving Joint Service and DoD Activities.

(A) Every organization with a population of Air Force employees is subject to the policy established in DoD Instruction 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*.

(B) The Air Force may establish a memorandum of agreement or a Host Tenant Support Agreement with each agency or the host military service responsible for implementing and administering ADR programs.

(C) Commanders, vice commanders, or designees should consult with SAF/GCR prior to executing memoranda of agreement and Host Tenant Support Agreements. Policies regarding dispute resolution settlement authority while an Air Force employee is working for a non-Air Force agency or at a non-Air Force installation should be coordinated through SAF/GCR.

(D) Only Air Force-approved memoranda of agreement should be used when providing service to members of other military services including Joint organizations or other DoD activities.

ATTACHMENT 4**APPENDIX 4****BEST PRACTICES FOR THE ESTABLISHMENT OF COMMAND-LEVEL
WORKPLACE NEGOTIATION AND DISPUTE RESOLUTION (NDR) PROGRAMS**

1. NDR Program Managers. MAJCOM, DRU and FOA Commanders, Vice Commanders, and designees are encouraged to consider appointing a Workplace Negotiation and Dispute Resolution (NDR) Program Manager to facilitate the responsibilities, functions, and activities described in this Appendix.

2. ADR Plan. Each Air Force installation should maintain a plan for utilizing ADR as part of its workplace dispute procedures, and ensure that a copy is submitted through its MAJCOM to SAF/GCR. The ADR plan may supplement a MAJCOM ADR plan or be stand-alone, or, to the extent it affects dispute procedures subject to collective bargaining obligations, it may be incorporated into separate agreements negotiated with appropriate local labor unions. ADR plans developed at locations outside the United States must be consistent with applicable host nation labor laws and agreements. Installations have broad discretion with respect to the content of the ADR plan, but at a minimum, it should include:

(a) A procedure for determining which disputes are eligible for ADR and the official responsible for making the determination.

(b) Source of third-party neutrals. Identify whether local employees will be used as collateral-duty neutrals and, if so, specify the methods for selecting, training, and managing them.

(c) Responsibility for ADR data collection and reporting.

3. Workplace Disputes Eligible and Ineligible for ADR. For purposes of AFI 51-1201, a workplace dispute is any formal or informal claim or issue in controversy that arises out of an existing or prospective employment relationship between the Air Force and its civilian employees, applicants for employment, or military members, or which otherwise materially affects conditions of employment, for which a remedial process is authorized by law, regulation, or policy. A workplace dispute may be written or oral. Installations should track all disputes, even oral disputes, in the ADR data collection system. Subject to collective bargaining obligations and case screening requirements, every workplace dispute is a potential candidate for ADR. Examples of disputes ordinarily eligible or ordinarily ineligible for ADR can be found at www.ndr.af.mil.

4. ADR Case Appropriateness Selection Criteria. All eligible workplace disputes filed with an Air Force activity pursuant to an established grievance, complaint or appeal process or entered into an electronic case management or tracking system, such as the system used to manage EEO complaints, should be screened in accordance with the criteria set forth below to ensure that ADR is an appropriate vehicle for resolving the dispute. All eligible workplace disputes are presumed to be appropriate for ADR, though some eligible workplace disputes may not be

appropriate for ADR. The Air Force retains the right to decide whether a dispute is appropriate for resolution by ADR before offering ADR to the employee.

- (a) Statutory bases for considering not using ADR (5 U.S.C. § 572(b)). An agency is required by the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571 *et seq.* (October 19, 1996)(ADRA) to consider not using ADR if certain circumstances exist. The statutory bases for considering not using ADR can be found at www.ndr.af.mil.
- (b) Non-statutory bases for considering not using ADR. Some disputes may be inappropriate for ADR, depending on the surrounding circumstances, even if they do not meet the statutory criteria. One example is when the aggrieved party requests anonymity. A judgment that a claim will fail for lack of evidence is not, by itself, a basis for finding ADR inappropriate to resolve the claim.
- (c) The determination whether ADR is appropriate for a particular dispute is a Command/Agency function to be performed by the installation Staff Judge Advocate (SJA) and the servicing Labor Law Field Support Center (LLFSC) attorney or Air Force Materiel Command (AFMC) attorney if the matter is within their purview.
- (d) The determination whether ADR is appropriate is final and not subject to appeal or further review by a party requesting ADR; however, the Agency may reconsider a determination at any time during the processing of the dispute. Once a case is in litigation (i.e., in EEO matters once a formal complaint has been filed), the assigned agency representative (a LLFSC or AFMC attorney) has discretion to determine whether ADR is appropriate for an eligible dispute.
- (e) Screening a dispute to determine whether it is appropriate for ADR is accomplished by reviewing each eligible dispute and applying the statutory and non-statutory bases for considering not using ADR which have been specifically reviewed and approved by the SJA or designee. The review should be completed within 7 calendar days of an agency official being made aware of an employee's intent to file a dispute or within 7 calendar days of the filing of a complaint or grievance. For EEO disputes, the review need only be made at the informal stage of a complaint.
- (f) At the completion of the screening, if a dispute against the agency is found appropriate for ADR, an offer of ADR should be made to a management official with settlement and signature authority over the dispute. Management should be strongly encouraged to participate in ADR. If the dispute is found inappropriate for ADR an offer of ADR should not be made to either party.

(1) If a management official with settlement authority agrees to attempt ADR, proposed ADR proceeding dates should be obtained from the management official and an unconditional offer of ADR should be made to the employee within 7 calendar days of management's ADR acceptance. The employee's participation should be strongly encouraged. If an employee has not accepted the offer of ADR after 7 calendar days, that employee should be presumed to have rejected the offer of ADR.

(2) If a management official with settlement authority does not agree to attempt ADR, the SJA may be requested to discuss with the settlement authority on a case-by-case basis whether consideration should be given to appointing an agency representative outside of the chain of command to participate in the ADR on the agency's behalf. ADR must be accepted by management at installations with a policy requiring supervisors and managers to participate in good faith in an ADR process. The offer should be made at the completion of the screening after a management official with settlement authority has agreed to attempt ADR.

5. Management Participation in ADR Proceedings. Commanders, vice commanders and designees are encouraged to adopt policies requiring supervisors and managers to participate in good faith in an ADR process once a dispute is determined to be appropriate for ADR. Good faith participation does not require any party or authorized representative of a party to settle or agree to terms that are unacceptable or unenforceable. Terms are unenforceable, for example, when they are contrary to law or governing regulations.

6. ADR Agreement and Selection of Neutrals. Parties agreeing to use mediation or some other ADR procedure to resolve a dispute evidenced by a written claim or complaint should execute a written agreement to that effect in advance of the procedure. Written agreements to mediate or use other ADR processes should be maintained according to the records retention policy. ADR plans should prescribe the method for selecting the neutral. Commanders, vice commanders or designees may appoint neutrals or they may be selected by the parties from a list of candidates. If a suitable neutral cannot be obtained from local resources, the Air Force NDR Program Office in SAF/GCR may provide ADR support at no cost to the requesting installation, subject to availability of funds. Send requests for mediation and other ADR support to SAF/GCR by email (usaf.pentagon.saf-gc.mbx.saf-gcr-workflow@mail.mil).

Additional guidance regarding ADR agreements, the selection of neutrals, and an example of an ADR agreement can be found at www.ndr.af.mil.

7. Convening and Conducting ADR Proceedings. An ADR proceeding should be convened in every eligible and appropriate dispute in which both parties agree to use ADR. Detailed guidance on how to convene and conduct ADR proceedings can be found at www.ndr.af.mil.

(a) ADR proceedings should be convened as soon as practicable after the parties agree to use ADR, normally within 5 calendar days, but no later than 45 calendar days after agreement to use ADR, unless the parties consent in writing to extend this period.

(b) ADR proceedings should be conducted in suitable facilities at a neutral location outside the organization in which the dispute arose. Prior to the proceedings, the parties and the neutral should be provided a telephone number of someone they may contact for assistance during the proceeding, and the names and numbers of any on-call ADR support providers.

8. Participants in ADR Proceedings. Participants in workplace dispute ADR proceedings consist of the mediator or other neutral and the parties to the dispute. For training purposes, and

with the parties' consent, a co-mediator may also be present at all stages of the proceedings, including private caucuses. Subject to local bargaining agreements, the parties may appear alone or with one or more representatives of their choice. Representatives may, but need not, be attorneys. The neutral should have the authority to set reasonable limits on the number of representatives based on the size of the room and the need for full and effective communication between the parties and the neutral. The person representing management in an ADR proceeding should have sufficient authority to act on behalf of the Air Force to settle the issues in controversy, or have immediate access to those who do have such authority.

9. Reaching Settlement.

(a) If the parties are able to settle one or more issues in their case, the neutral assists them in drafting a settlement agreement describing the terms and conditions of their settlement. The settlement agreement is subject to review and approval to ensure legal and regulatory compliance and the ability of the parties to carry out its terms. All issues concerning the legal sufficiency and regulatory compliance of any term or condition must be resolved before the agreement becomes final and enforceable. When necessary, the parties may seek guidance on the enforceability of proposed terms before signing a settlement agreement. The settlement agreement should contain a statement that the terms of the agreement are not final until the legal and regulatory compliance review is formally documented. Sample settlement agreements can be found at www.ndr.af.mil.

(b) Allegations of breach of a settlement agreement are handled according to procedures established for the type of workplace dispute to which the settlement pertains (e.g., EEO or Negotiated Grievance Procedure). These procedures should be included in the actual settlement agreement.

(c) All appropriate offices should review the mediated settlement agreements for legal sufficiency. Individual and global settlement agreements involving multiple venues or case types should be routed through all appropriate offices for coordination. Settlement agreements of EEO formal complaints should be routed to the Director, Air Force Civilian Appellate Review Office. If a legal office concludes that a change must be made to an agreement for legal sufficiency, the neutral or the commander, vice commander, or designee should ensure that the change is coordinated with the parties.

(d) The ADR neutral may not retain a copy of the settlement agreement. The commander, vice commander, or designee may retain copies of settlement agreements for peer-to-peer disputes and any other disputes not part of another administrative or grievance process.

10. Impasse. Impasse occurs when the parties fail to resolve an issue and the neutral determines that further proceedings would be futile. ADR proceedings should be terminated when impasse is reached and the parties should be advised of the other remedies and processes available to them. ADR is not a replacement for other dispute procedures and remedies; therefore, a party who elects ADR does not waive the right to pursue such other available remedies if ADR fails to resolve the dispute as long as applicable time limits are met.

11. Complaints about Mediation Services.

(A) Complaints about mediators or other neutrals should be directed to Commanders, Vice Commanders, or designees. After consulting with the SJA or designee, they should decide whether corrective action is necessary and, if so, what action should be taken. If there is a substantiated complaint alleging misconduct, such as a breach of the standards of conduct, the Commander, Vice Commander, or designee and/or the SJA should consider relieving the mediator of further mediation duties. SAF/GCR should be consulted before a decision to relieve a mediator of his or her mediation duties is made.

(B) Complaints about third-party neutrals under contract with SAF/GCR should be directed to the Air Force NDR Program Office. Complaints should clearly document the facts and circumstances surrounding the incident and request a specific remedy. Action taken will depend on the facts of each case.

12. Records. Records created as a result of the processes prescribed in AFI 51-1201 or this Appendix are maintained in accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with Air Force Records Disposition Schedule, located in the Air Force Records Information Management System. Additional guidance for retention and disposition of Negotiation and Dispute Resolution records is as follows:

(A) NDR Program files. These are files generated in connection with NDR Program management, such as correspondence, statutes and regulations, guidance and policy documents, letters of appointment, program evaluations, reports, statistical analyses, mediator certification files, and other records relating to the overall NDR Program.

(B) ADR case files. These files include records that document ADR proceedings in specific disputes, such as intake forms, ADR agreements, settlement agreements or other documentation of the disposition of the case, written evaluations of the process and/or the neutral, and any other documentation or correspondence relating to the ADR proceeding. If the files pertain to a dispute in which there is an official dispute file, such as an EEO complaint or employee grievance, they become part of the official dispute file and their retention and disposition are governed by the schedules applicable to such files. If there is no official dispute file, these records are treated as ADR case files.

(C) Personal notes. Notes taken by the neutral and the parties and/or their representatives during a dispute resolution proceeding, and which are not made part of the record, are not considered agency records. Personal notes taken by the neutral should be destroyed as soon as practicable, to include after final coordination of a settlement agreement, withdrawal of the case, or a decision by both parties to end the dispute resolution proceeding indefinitely.

13. Procedures Involving Joint Service and DoD Activities.

(A) Every organization with a population of Air Force employees is subject to the policy established in DoD Instruction 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*.

(B) The Air Force may execute a memorandum of agreement or a Host Tenant Support Agreement with each agency or the host military service responsible for implementing and administering ADR programs.

(C) Commanders, Vice Commanders, or designees should consult with SAF/GCR prior to executing memoranda of agreement and Host Tenant Support Agreements.

(D) Policies regarding dispute resolution settlement authority while an Air Force employee is working for a non-Air Force agency or at a non-Air Force installation should be coordinated through SAF/GCR.

(E) Only Air Force-approved memoranda of agreement should be used when providing service to members of other military services including Joint organizations or other DoD activities.