

University of the Incarnate Word Dispute Resolution Plan

1. Purpose and Construction

We are proud of the University of the Incarnate Word, of its achievements, and of its people. We recognize that even the best employees will have problems and, at times, disputes that need to be resolved quickly and fairly. It is important to the University to work out our problems and to return to amicable and productive workplace relationships as soon as possible. In that spirit, the University's Board of Trustees initiated the development of a Dispute Resolution Plan and the related Dispute Resolution Rules stipulating mandatory and binding arbitration, and subsequently faculty and administrators collaborated to develop a mutually beneficial program for faculty, staff, administrators, and the University.

The Plan is designed to provide a program for the quick, fair, accessible, and inexpensive resolution of Disputes between the University and the University's present and former Employees and Applicants for employment, related to or arising out of a current, former or potential employment relationship with the University. The Plan is intended to create, in lieu of litigation, an exclusive and binding procedural mechanism for the final resolution of all Disputes between the University and the University's present and former Employees, and Applicants for employment, related to or arising out of a current, former, or potential employment relationship with the University. The Plan does not provide for a resolution of any dispute between Employees. It is not intended either to abridge or enlarge substantive rights available under applicable law. The Plan should be interpreted in accordance with these purposes.

2. Definitions

A. "AAA" means the American Arbitration Association.

B. "JAMS" means JAMS The Resolution Experts.

C. "CPR" means the Center for Public Resources.

D. The "Act" means the Federal Arbitration Act, 9 U.S.C 1, et seq., as amended from time to time.

E. "University" means the University of the Incarnate Word, UIW International Inc., and any other entity or person alleged to have joint and several liability with the University of the Incarnate Word concerning any Dispute, and all of their directors, officers, employees, and agents, every plan of benefits, whether or not tax-exempt, established or maintained by any such entity, the

fiduciaries, agents and employees of all such plans, and the successors and assigns of all such entities, plans and persons.

F. "Dispute" means all legal and equitable claims, demands, and controversies, of whatever nature or kind, whether in contract, tort, under statute or regulation, or some other law, between the University and its Employees and a person or entity otherwise entitled to its benefits, including, but not limited to, any matters with respect to:

1. this Plan;
2. the employment or potential re-employment of an Employee, including the terms, conditions, or termination of such employment with the University;
3. employee benefits or incidents of employment with the University;
4. any other matter related to or concerning the relationship between the Employee and the University including, by way of example and without limitation, allegations of : discrimination based on race, sex, sexual orientation, religion, color, national origin, age, veteran status or disability; sexual or other kinds of harassment; workers' compensation retaliation; Title VII retaliation; defamation; infliction of emotional distress; or status, claim or membership with regard to any employee benefit plan;
5. an Applicant's application for employment and the University's actions and decisions regarding such application; and
6. any personal injury allegedly incurred in or about a University workplace.

"Dispute" includes all such matters regardless of when the events on which they are based occurred, including matters based on events occurring before the Employee or Applicant became subject to this Plan (so long as such disputes were not previously asserted in a judicial forum) or after termination of the employment relationship.

G. "Electing Entity" means any legal entity that has agreed to be bound by the Plan as provided herein.

H. "Employee" means any person (including faculty, administrators, and staff members) who is or has been in the employment of the University on or after the effective date of this Plan, whether or not employed at the time a claim is brought with respect to a Dispute, residing in the United States or otherwise subject to the laws of the United States or any state, municipality, or other political subdivision of the United States.

I. "Applicant" means any person who is seeking or has sought employment with the University after the effective date of this Plan.

J. "Party" means, with respect to a particular Dispute, affected persons and /or entities bound by this Plan.

K. "Plan" means this University of the Incarnate Word Dispute Resolution Plan, as amended from time to time.

L. "Rules" means the University of the Incarnate Word Dispute Resolution Rules, as amended from time to time, which are applicable to mediation and arbitration.

M. "Sponsor" means The University of the Incarnate Word, a Texas non-profit Corporation.

N. "Participant" means any Employee who is covered by this Plan.

3. Application and Coverage

A. Until amended or terminated pursuant to Section 6 of this Plan, this Plan applies to and binds the University, each Employee and Applicant and the heirs, beneficiaries and assigns of any such person or entity; provided, however, that this Plan shall not apply to:

1. any Employee in a unit of Employees represented by a labor organization, or to the University with respect to such employees, except to the extent permitted in an applicable collective bargaining agreement or lawfully imposed by the University when no collective bargaining agreement is in effect; or
2. any Employee who is a faculty member who was granted tenure prior to the effective date of this Plan, unless and until such tenured faculty member Employee confirms in writing his/her independent choice to opt into this Plan and to be bound by the terms of this Plan and the Rules.

B. Except as provided for herein, this Plan applies to any Dispute.

C. Notwithstanding anything to the contrary in this Plan, the Plan does not apply to claims for workers' compensation benefits or unemployment compensation benefits.

D. Mediation and arbitration are only available for Disputes involving legally protected rights.

E. Notwithstanding any other provision hereof, any court with jurisdiction over the Parties may issue any injunctive orders (including preliminary injunctions)

if the necessary legal and equitable requirements under applicable law are met pending the institution of proceedings under the Plan.

4. Resolution of Disputes

All Disputes not resolved through the applicable grievance procedure published by the University in the *Administrator/Staff Guidelines* or the *Faculty Handbook* or otherwise settled by the Parties shall be finally and conclusively resolved under this Plan and the Rules.

5. Confidentiality

A. The Plan, its Administrator, any subordinate administrators, the staff of the Plan and any other person conducting the Plan and any other person conducting conferences or serving as an impartial third party on behalf of the Plan in any in-house dispute resolution process conducted under the auspices of the Plan, will hold matters reported under the Plan and related communications in confidence, in keeping with the Standards of Practice and the Code of Ethics of The Ombudsman Association. The Code of Ethics and the Standards of Practice of The Ombudsman Association are incorporated into this Plan by reference and appended.

For purposes of requests by or subpoenas from any Party that the Plan Administrator or any subordinate administrators, or any member of the staff of the Plan or person conducting conferences or serving as an impartial third party on behalf of the Plan, provide testimony in any internal or external investigation, administrative hearing, or arbitration or litigation proceeding, the confidentiality standards described in this section attach to the Dispute Resolution Plan, rather than any individual disputant. This means that only the Plan, rather than any individual disputant, may waive confidentiality, and the Plan may only waive confidentiality, even upon request or subpoena by a disputant, under circumstances consistent with The Ombudsman Association Code of Ethics and Standards of Practice.

B. No Participant shall be subject to any form of discipline or retaliation for initiating or participation in good faith in any process or proceeding under this Plan.

6. Amendments and Termination

A. This Plan or the Rules may be amended or terminated by the Sponsor with respect to non-faculty Participants by the Sponsor giving at least thirty (30) days notice to current non-faculty Participants. However, no such amendment or termination shall apply to a Dispute for which a proceeding has been initiated earlier pursuant to the Rules then in effect.

B. This Plan or the Rules may be amended or terminated with respect to faculty Participants by means of a writing signed on behalf of faculty Participants by duly authorized representatives of the Faculty Senate and by the Sponsor. However, no such amendment or termination shall apply to a Dispute for which a proceeding has been initiated earlier pursuant to the Rules then in effect.

C. The Sponsor shall promptly notify AAA, JAMS, and CPR whenever this Plan or the Rules are amended or terminated pursuant to Section 6.A. or Section 6.B.

7. Applicable Law

A. The Act shall apply to this Plan, the Rules, and any proceedings under the Plan or the Rules, including any actions to compel, enforce, vacate or confirm proceedings, awards, orders of an arbitrator, or settlements under the Plan or the Rules.

B. Other than as expressly provided herein, or in the Rules, the substantive legal rights, remedies, and defenses for all Parties are preserved. In the case of arbitration, the arbitrator shall have the authority to determine the applicable law and to order any and all relief, legal or equitable, including punitive damages, which a Party could obtain from a court of competent jurisdiction on the basis of the claims made in the proceeding.

C. Other than as expressly provided herein, or in the Rules, the Plan shall not be construed to grant additional substantive, legal, or contractual rights, remedies or defenses which would not be applied by a court of competent jurisdiction in the absence of the Plan.

D. Notwithstanding the provisions of the preceding subsection, in any proceeding before an arbitrator or arbitrators, the arbitrator(s), in his/her/their discretion, may allow a prevailing Participant a reasonable attorney's fee as part of the award. The discretion to allow an award of fees under this subsection is in addition to any discretion, right, or power which the arbitrator(s) may have under applicable law.

8. Administrative Proceedings

A. This Plan shall apply to a Dispute pending before any local, state or federal administrative body or court unless prohibited by law.

B. Participation in any administrative or judicial proceeding by the University shall not affect the applicability of the Plan to any such Dispute upon

termination of the administrative or judicial proceedings. A finding, recommendation, or decision by an administrative body on the merits of a Dispute shall have the same legal weight or effect under the Plan as it would in a court of competent jurisdiction.

9. Exclusive Remedy

Proceedings under the Plan shall be the final and binding method by which Disputes are resolved.

10. Effective Date

The effective date of this Plan with respect to non-faculty Participants shall be August 1, 2004

The effective date of this Plan with respect to faculty Participants shall be August 1, 2005.

11. Severability

The terms of this Plan and the Rules are severable. The invalidity or unenforceability of any provision therein shall not affect the application of any other provision. Where possible, consistent with the purposes of the Plan, any otherwise invalid provision of the Plan or the Rules may be reformed and, as reformed, enforced.

12. Administration

Sponsor shall appoint one or more persons to administer the Plan who shall be known as the "Dispute Resolution Plan Administrator" and who shall be responsible for the management and administration of the Plan.

13. Assent

Employment or continued employment after the Effective Date of this Plan constitutes consent by both the Participant and the University to be bound by this Plan, both during the employment and after termination of employment. Submission of an application, regardless of form, for employment constitutes consent by both the Applicant and the University to be bound by this Plan.