



SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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## **ARBITRATION RULES AND PROCEDURES**

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## **ARBITRATION RULES AND PROCEDURES**

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### **RULE-A1 AGREEMENT ON RULES AND PROCEDURES**

The parties to the arbitration shall be deemed to accept and make these “rules and procedures” a part of the arbitration procedure that will be administered and conducted by Construction Dispute Resolution Services, LLC (CDRS) unless they have specified other rules and procedures and have written permission from CDRS to utilize those specified rules and procedures in the arbitration proceedings..

- (a) Any suggested changes to these rules and procedures must be agreed upon by all of the parties to the arbitration and must be presented to the arbitrator(s) in writing after the arbitrator(s) is appointed. Those proposed changes to the rules and procedures must receive the written consent of that arbitrator(s).
- (b) The arbitrator(s) may make changes to these rules and procedures as he/she deems to be proper for the expeditious and proper handling of the arbitration. All parties to the arbitration must also agree to make the suggested changes recommended by the arbitrator(s) in order for those changes to be implemented.
- (c) If there is a conflict between these rules and procedures and the rules or procedures of other documents to the arbitration including the Agreement to Arbitrate, Advocacy or Selected Arbitrator Agreement, Pre-Hearing Agreement or any other documents, these rules and procedures shall take precedence and govern the rules and procedures of the arbitration unless both parties and the arbitrator agree to utilize the rule or procedure in the other document. Any rules and procedures that exist in third party documents that are in conflict with these rules and procedures must be brought to the attention of the arbitrator in writing and approved by the arbitrator(s) before they are implemented in the arbitration.
- (d) If there are changes made to these rules and procedures by CDRS after the initiation of the arbitration, the rules and procedures in effect on the date of the Request for Dispute Resolution Services shall be in effect throughout the arbitration unless the parties conform to Rule-A1(a).
- (e) If this is a “Med-Arb” or “Arb-Med”, these rules shall apply only to the arbitration section of the med-arb or arb-med. The CDRS Mediation Rules and Procedures shall govern the mediation proceedings.
- (f) If there are other special CDRS Arbitration Rules and Procedures specified to handle special arbitrations such as Home Warranty Arbitrations, Home Inspection Arbitrations, etc, those Rules and Procedures shall supersede these general Arbitration Rules and Procedures.
- (g) All CDRS Arbitrations shall be governed by the Federal Arbitration Act.

## **RULE-A2 RULE OR PROCEDURE IN CONFLICT WITH LAW**

If any rule or procedure, part of a rule or procedure or modification or change of a rule or procedure shall be found to be in conflict with any provision(s) or section(s) of applicable law, that applicable provision(s) or section(s) of law shall govern and shall supersede these rules and procedures. Only that rule or procedure shall be affected and all other rules or procedures shall remain in effect.

## **RULE-A3 INITIATION OF ARBITRATION**

Any party may initiate the arbitration process by fully executing a *Request for Dispute Resolution Services* and transmitting it to CDRS by mail, fax or e-mail, along with the required filing fee. The party requesting the arbitration shall be the "Claimant". The Claimant shall send a copy of the Request for Dispute Resolution Services to the other party(s), who shall be known as the "Respondent", by certified or registered mail, return receipt requested, or by service as authorized for the commencement of a civil action as stipulated by the jurisdiction in which the arbitration shall be conducted. The Request for Dispute Resolution Services must be accompanied by the appropriate non-refundable filing fee.

## **RULE-A4 RESPONSE TO INITIATION OF ARBITRATION**

The respondent shall be entitled to file with CDRS, a response to claims made in the initiation of the arbitration. They should include a response to the original claim(s) of the Claimant and any counterclaim(s) by the Respondent. The Respondent must also send a copy of their response and their counterclaims to the Claimant by certified or registered mail, return receipt requested or by service as authorized for the commencement of a civil action as stipulated by the jurisdiction which the arbitration shall be conducted, within fifteen (15) days of receipt of the *Request for Dispute Resolution Services*.

## **RULE-A5 HANDLING OF CLAIMS AND COUNTERCLAIMS**

The initial claim(s) of the Claimant shall be included with the *Request for Dispute Resolution* form that was submitted to CDRS. The initial counterclaims shall be included with the response by the Respondent to the initiation of arbitration.

- (a) If the Claimant requests to file additional claims after they have filed their original claims along with the *Request for Dispute Resolution Services* and an arbitrator has not been appointed, the Claimant should contact the CDRS case administrator to file any additional claims. Proper notification to the Respondent shall be required.
- (b) If the Respondent requests to file additional counterclaims after they have responded to the claims of the Claimant and an arbitrator has not been appointed, the Respondent should contact the CDRS case administrator to file any additional counterclaims. Proper notification of the Claimant shall be required.
- (c) After an arbitrator or a tripartite panel has been appointed to the arbitration case, any new claims or counterclaims should be filed with the CDRS case administrator and will be added to the arbitration only with the approval of the arbitrator or the chairman of the tripartite panel. Proper notification to the Claimant and respondent shall be required.
- (d) Only claims and counterclaims known and agreed to by the parties prior to the arbitration shall covered by the arbitration award. New claims or counterclaims may be added to the arbitration hearing only upon agreement by all of the parties and the arbitrator.

## **RULE-A6 CASE ADMINISTRATOR**

Upon the receipt of a *Request for Dispute Resolution Services* form from a Claimant or upon the receipt of a court order compelling arbitration by CDRS, CDRS will assign a case administrator who will make all arrangements for the arbitration including but not limited to: disseminating and finalizing all forms, agreements and other documents required, collecting any deposits or fees that might be due prior to, during or after the arbitration, receiving and filing all claims and counterclaims, scheduling administrative conferences, scheduling pre-hearing conferences, scheduling the arbitration hearing and any other administrative functions that may be required. All administrative communications shall be conducted between the parties to the arbitration and the case administrator. The arbitrator(s), at his/her/their discretion, shall also be involved in the administration discussions, decisions and procedures. The case administrator shall also be responsible for the issuance of the certified copy of the arbitration award after the arbitrator has rendered that award.

## **RULE-A7 GENERAL COMMUNICATIONS**

Prior to the assignment of a case administrator, all communications can be with any representative of CDRS. Improper communications with a potential arbitrator may be a cause for the disqualification of that arbitrator. The following rules shall govern communications with the case administrator and with an arbitrator:

- (a) Prior to the appointment of an arbitrator, the only allowed communications between the parties and the arbitrator candidate shall be a discussion of the general claims and counterclaims of the case for the arbitrator to be able to make a decision if he/she is properly qualified to handle the arbitration. It is also allowable for the parties to interview the arbitrator candidate as to the arbitrator's qualifications, experience, neutrality, independence, availability and other topics that will help the parties to decide on the suitability of the arbitrator to handle the arbitration. After a case administrator has been assigned by CDRS, all communications by the parties with CDRS shall be made with the case administrator until an arbitrator has been appointed.
- (b) After an arbitrator has been appointed, any communications related to the substance of the arbitration, whether in person, by telephone, fax or e-mail, must involve all parties to the arbitration. Any email or other communications between the parties and the arbitrator(s) must be directed to CDRS and may not be sent to any other e-mail address of the arbitrator(s). CDRS and the arbitrator(s) may elect to allow direct communications with the arbitrator by the parties rather than directing all communications through CDRS. CDRS must be copied on all communications between the parties and the arbitrator if applicable.
- (c) If there is a tripartite panel involving advocacy arbitrators, the parties understand that the advocacy arbitrators shall not be considered as neutral and any and all communications are allowed between the parties and the advocacy arbitrators. If the advocacy arbitrators are to be considered neutral arbitrators, they must follow the rules and procedures of a neutral arbitrator.
- (d) A party may provide an interpreter, sign language specialist or other communication specialist at their own expense, to assist in the arbitration process at any time from arbitration initiation to the issuance of the final award.
- (e) As a general rule, if a party is represented by an attorney, all communications from CDRS and the other party shall be directed to the attorney and not to the party.

## **RULE-A8 APPOINTMENT OF ARBITRATOR(S)**

The appointment of the arbitrator(s) shall follow the following procedures:

- (a) There shall be one CDRS arbitrator assigned to the case unless all of the parties agree that a tripartite panel shall be assigned or if a court ordered arbitration mandates the appointment of a tripartite panel or the document specifying arbitration specifies a tripartite panel.
- (b) If one CDRS arbitrator shall be required, the CDRS case administrator shall assign and appoint the arbitrator unless there is a request for a specific CDRS arbitrator who has been selected by the unanimous consent of all parties to the arbitration. If the parties can not agree on an arbitrator within a reasonable period of time as specified by CDRS, the CDRS Senior Case Administrator shall appoint the arbitrator.
- (c) If three arbitrators shall be required for a tripartite panel, each party shall select one arbitrator from the CDRS National Panel of Arbitrators and the two selected arbitrators shall then select an arbitrator chair from the CDRS National Panel of Arbitrators. If the parties can not agree on the chair for the arbitration panel, the CDRS case administrator shall assign the arbitrator chair.
- (d) If an arbitrator is disqualified or needs to be relieved of his/her responsibilities for any reason after his/her appointment, the CDRS case administrator shall oversee the appointment of a replacement arbitrator according to rule-A8b or 8c.
- (e) If the arbitration involves a tripartite panel consisting of one neutral arbitrator and two advocacy or selected arbitrators, the advocacy arbitrators shall be selected by the parties, one selected by each party either from the arbitrators available from CDRS or of their own choosing. The neutral arbitrator shall be appointed by the CDRS case administrator, from among the CDRS Approved ADR Specialists and shall serve as the chair of the arbitration panel unless the parties' arbitrators unanimously select a chair from among the CDRS Approved ADR Specialists.

## **RULE-A9 ARBITRATOR DISCLOSURE AND DISQUALIFICATION**

An arbitrator must be a neutral person who is impartial and must maintain his/her impartiality and neutrality throughout the entire arbitration.

- (a) An arbitrator must disclose any information that could be considered a reason that might affect the arbitrator's impartiality and neutrality. The arbitrator's disclosure should not be considered as an admission that the arbitrator considers the disclosed information to affect his/her ability to remain impartial and neutral. The disclosure is for informational purposes only.
- (b) The arbitrator should complete and submit an *Arbitrator's Disclosure Statement* to the CDRS case administrator as soon as he/she realizes that there might be a perceived loss of impartiality or neutrality because of a prior relationship or dealing with any of the parties to the arbitration or with any other person, company or entity involved in the arbitration.
- (c) The case administrator shall forward a copy of the Arbitrator's Disclosure Statement to all of the parties to the arbitration. The parties must return the Arbitrator's Disclosure Statement indicating their acceptance or non-acceptance of the arbitrator continuing to serve as the arbitrator. If only one party objects to the arbitrator continuing to serve as the arbitrator, the arbitrator, with the assistance of the case administrator, shall determine whether he/she shall be dismissed as the arbitrator. If

both Parties request that the arbitrator be disqualified, that arbitrator shall be disqualified.

- (d) Any party may initiate a process to have an arbitrator disqualified for good causes if a party would like an arbitrator removed for any sound reason. A written request shall be sent to the CDRS case administrator which should include all sound reasons why the arbitrator should be removed. The case administrator shall review the request with the arbitrator. If the arbitrator and the case administrator feel that there is good cause, the arbitrator will be dismissed for cause. If the arbitrator and the case administrator feel that the request is unfounded for cause and that the arbitrator's neutrality has not been effected in such a manner that would influence his/her ability to render a fair and equitable award, the arbitrator will continue to serve as the arbitrator for the case. The arbitrator and case administrator may consult with the CDRS Senior Administrator if applicable. On rare occasions, at the discretion of the case administrator, a special dismissal hearing maybe conducted with all parties to the arbitration in attendance.
- (e) If the arbitrator is dismissed, a new arbitrator shall be appointed according to rule-A8(b). If the arbitrator is a member of a tripartite panel and the arbitration hearing has commenced, the remaining arbitrators may continue with the arbitration hearing and render the final award only with the unanimous consent of all of the parties to the arbitration.
- (f) If an arbitrator becomes ill, resigns or is unable to continue with the arbitration, a new arbitrator shall be appointed according to rule-A8(b). If the arbitrator is a member of a tripartite panel and the arbitration hearing has commenced, only with the unanimous consent of the Parties and the remaining arbitrators, the remaining arbitrators may continue with the arbitration hearing and render the final award.
- (g) If a replacement arbitrator is appointed in a single arbitrator case, the case administrator shall notify all of the parties to the arbitration as to whether there will be a delay in the schedule of the arbitration and any other appropriate information concerning the continuance of the arbitration.
- (h) If there is a new replacement arbitrator assigned to a tripartite panel, the new tripartite panel shall decide if any or all of the prior hearing information shall be repeated for the benefit of the new replacement arbitrator.

#### **RULE-A10 LOCATION OF ARBITRATION**

The CDRS case administrator and/or arbitrator shall select and specify the location of the arbitration hearing. The case manager or arbitrator shall make every effort to accommodate the requests of the parties as to a convenient and cost effective location.

#### **RULE-A11 DATE(S) OF ARBITRATION HEARING**

The arbitrator shall select and specify the date(s) of the arbitration hearing. The arbitrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the arbitration hearing.

- (a) If additional time shall be required to complete the hearing, the arbitrator shall select and specify the additional date(s) for the continuance of the arbitration hearing. The arbitrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the continuance of the arbitration hearing.
- (b) By mutual consent of the parties and the arbitrator, any scheduled arbitration event may be rescheduled.

- (c) Upon a request by the parties, the CDRS case administrator and/or the arbitrator, if appointed, shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation of the arbitration proceeding. If the request for a postponement is approved by the case administrator and/or by the arbitrator, the case administrator and/or the arbitrator shall select and specify the rescheduled date(s) of the arbitration hearing. The arbitrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the rescheduled arbitration hearing.
- (d) If the arbitrator determines that a case needs to be postponed due to an illness or injury to one of the parties or the arbitrator, due to inclement weather, due to non-payment of fees due to CDRS, due to travel arrangement problems or due to any other reason where the arbitrator decides that a postponement is necessary, the arbitrator will notify the parties as soon as practicable as to the postponement and the date(s) of the rescheduled arbitration hearing. The arbitrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the rescheduled arbitration hearing.

#### **RULE-A12 CHALLENGES**

If one of the parties wishes to challenge the scope and validity of the arbitration, the arbitrator shall have the authority to rule on the validity and scope of the construction contract, provision of an insurance or warranty document, or the specifics of any arbitration document that prescribes the need for and the scope and validity of the arbitration.

- (a) The arbitrator shall have the authority to review any document that specifies arbitration as a clause of that document and to rule on its scope and validity. If the arbitrator rules that certain sections of the document are invalid, it is still possible for the arbitrator to rule that the arbitration clause is valid and should be treated as a clause that is independent and severable from the other provisions of the document.
- (b) If a party challenges the validity or arbitrability of an arbitration clause or agreement on the grounds that the arbitration clause or agreement was fraudulently obtained or a party was fraudulently induced to agree to the arbitration provisions of a construction contract or similar agreement, the arbitrator(s) shall have the responsibility and the authority to determine the validity of the challenge.
- (c) If there is any question as to what type of arbitration is specified in the document that specifies "arbitration" between the parties as the prescribed method of dispute resolution, the arbitrator shall have the authority to determine whether the word "arbitration" in that document was intended to be either binding or non-binding arbitration. The arbitrator may interview the parties as to their interpretation of the word "arbitration" and their understanding of what arbitration meant when the document was executed.

### **RULE-A13 PRE-HEARING ADMINISTRATIVE CONFERENCE**

An administrative conference, to be held with the case administrator, may be held at the request of any of the parties or at the request of the case administrator for the purpose of answering various administrative questions or discussing administrative items such as: reviewing claims and counterclaims, discussing arbitrator appointment, discussing timetables and dates of the arbitration hearing, discussing CDRS fees, costs and expenses, discussing the exchange of information, discussing potential witnesses or specialists, discussing the rules and procedures of the arbitration and other administrative matters. The administrative conference may be held in person or by telephone and may be conducted by the CDRS case administrator unless the arbitrator has been appointed, in which case, the arbitrator may conduct the administrative conference.

### **RULE-A14 PRE-HEARING ARBITRATOR'S CONFERENCE**

A pre-hearing arbitrator's conference may be held between the arbitrator(s) and all of the parties or their representatives to the arbitration at least 14 days prior to the arbitration hearing unless the arbitrator and the parties agree to a shorter period of time. The conference may be held in person or may be held by teleconference phone call at the discretion of the arbitrator(s). Items to be discussed shall include but not be limited to the following: claims and counterclaims, interrogatories, pre-hearing pleadings, opening statements, closing statements, discovery, witnesses, depositions, the issuance of subpoenas, rules and procedures to be followed during the hearing, dates and location for the hearing, arbitrator disclosure information, need for a jobsite visit by the arbitrator, and other related items at the discretion of the arbitrator(s) or at the request of the parties. The arbitrator shall be empowered to schedule additional pre-hearing arbitrator conferences if deemed necessary by the arbitrator or requested by one or more of the parties, with the approval of the arbitrator(s). At the conclusion of the pre-hearing conference, the CDRS Administrator shall issue to the Parties, an *Arbitration Pre-Hearing Order* specifying the particulars of the arbitration as agreed to during the pre-hearing conference.

### **RULE-A15 PARENT OR SUBSIDIARY INVOLVEMENT**

Where allowable by law, if a party to an arbitration is a subsidiary of a parent company, corporation or like entity, the parent organization may be named as a party to the arbitration, especially if the subsidiary is insolvent. This direct involvement by a parent organization shall be effective regardless of whether the parent organization was a signatory to the construction contract, arbitration agreement or similar document. The arbitrator(s) shall have the responsibility and the authority to decide as to whether the parent organization should be named as a direct party to the arbitration.

### **RULE-A16 PARTY REPRESENTATION**

A party to an arbitration may be represented by themselves, their attorney(s), or any individual(s) that the party designates to be their representative(s). The party must notify the CDRS case administrator if they are to have any other individual serve as their representative. The representative's name, address, phone number, fax number, e-mail and any pertinent information about the representative must be supplied in writing to the case administrator as soon as possible.



## **RULE-A17 ARBITRATOR'S POWERS AND AUTHORITY**

Unless there is written documentation to the contrary or if there is a law, statute, act or rule in effect in the area or jurisdiction of the arbitration, the arbitrator(s) shall have the authority and the power to establish such rules and regulations and direct certain actions as he/she/they shall deem just and expedient in respect to any procedure, rule or other matter in the arbitration process including but not limited to the following:

- (a) The arbitrator(s) shall have the authority to order pre-hearing exchanges of information, including but not limited to the production of all documents, the designation and exchange of the names and addresses of general or expert witnesses who may be called upon to testify at the hearing, exchanges of summaries of testimony of the proposed witnesses, and other items of discovery.
- (b) The arbitrator(s) shall have the authority to allow interrogatories from each of the parties to all of the other parties to the arbitration.
- (c) The arbitrator(s) shall have the authority to determine the admissibility and presentation of evidence and to impose such procedures, as he/she deems necessary to maintain an orderly and fair hearing in the pursuit of fairness and justice for both parties.
- (d) The Arbitrator(s) may "Swear-in" and/or administer an oath to all witnesses or those who will be testifying as part of the arbitration hearing.
- (e) The arbitrator(s) may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all parties are afforded the opportunity to present material and relevant evidence in the furtherance of their case.
- (f) Any non-privileged evidence, including hearsay evidence shall be admitted by the arbitrator(s) if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law, provided that the arbitrator may exclude evidence deemed to be cumulative.
- (g) The arbitrator(s) shall have the authority to limit testimony and to exclude evidence that, in his/her opinion would be immaterial or unduly repetitive.
- (h) The arbitrator(s) shall be responsible for the issuance of subpoenas, as he/she deems necessary or that is requested by the parties and attorneys or representatives of the parties if the local jurisdiction of the arbitration allows the issuance of subpoenas by an arbitrator.
- (i) The arbitrator(s) shall authorize the scheduling of depositions after he/she has approved and authorized such depositions.
- (j) The arbitrator(s) shall have the authority to limit the individuals who are allowed to be present at the arbitration hearing. As a general rule, witnesses will be allowed in the hearing room only while they are giving testimony.
- (k) The arbitrator(s) shall have the authority and power to request the production of books, records, construction contracts and related change orders, construction plans and drawings, and any other records, documentation and testimony that he/she/they deem necessary to conduct the arbitration.
- (l) If new information becomes available or new witnesses or specialists become known and available, if good cause can be shown and if allowed by the arbitrator(s), the party with the new information shall provide, in good faith, all documents and other items of discovery and/or a complete description of the information or a description of the testimony of the witness or specialist to the opposing party and the arbitrator(s).

- (m) The arbitrator(s), if he/she deem it to be of assistance, may, at the parties' expense, retain the services of an expert or professional witness such as an accountant, attorney, builder, remodeler, architect, building inspector, home inspector, material supplier or other individuals who may be of assistance in the conducting of the arbitration proceeding.
- (n) The arbitrator(s) shall have the authority and power to precede *exparte* in the event that either party or their representatives fails, after reasonable and proper notice, to attend a pre-hearing conference or fails to attend the arbitration hearings. (See Rule-A20(b))
- (o) The arbitrator(s) has the power and authority to grant any remedy or relief that the arbitrator deems just and equitable, to the extent allowable by law, and within the scope of the agreement of the parties, including but not limited to: interim awards, provisional remedies, punitive damages, temporary injunctive relief, declaratory relief, procedures to protect or conserve certain properties, or general damages.
- (p) The arbitrator(s) shall have the authority, at any time during the arbitration hearing, to suggest that the parties temporarily adjourn the arbitration hearing to allow the parties to attempt to settle any or all of their disputed items, with or without the use of a new CDRS mediator, without the assistance or involvement of any or the arbitrator(s). The arbitration shall reconvene only with the unanimous consent of all of the parties to the arbitration and/or at the direction the arbitrator(s). This process may be repeated multiple times in the arbitration if the arbitrator so rules.
- (q) The arbitrator(s) shall have the authority to rule on the validity of any objections to information being presented during the testimony at the arbitration.
- (r) The arbitrator(s) shall have the authority to request "Post Hearing Briefs" from any and all parties.
- (s) The arbitrator(s) shall have the power and authority to interpret and/or rule on or establish any rule or procedure that is or is not covered by the CDRS *Arbitration Rules and Procedures* specified herein.

#### **RULE-A18 PRIOR DISPUTE RESOLUTION**

If the parties had attempted prior dispute resolution including mediation or non-binding arbitration, the arbitrator(s) shall not allow prior settlement agreements or prior offers by the parties to be introduced into the arbitration proceeding except to the extent that the laws and statutes of the arbitration jurisdiction allows.

#### **RULE-A19 WRITTEN RECORD, ELECTRONIC RECORDING AND PHOTOGRAPHY**

Any party desiring a written record of the arbitration hearing may, at their own expense, provide a stenographer or court reporter. A copy of the written record shall be provided to the arbitrator at no charge to the arbitrator. If any other party to the arbitration would like a copy of the written record, they may request a copy from the other party and shall pay their applicable share of the expenses of the stenographer or court reporter, or they may provide their own stenographer or court reporter at their expense and must also provide a copy of the written record to the arbitrator at no cost to the arbitrator. Under no circumstances shall an arbitration or any part of an arbitration be videotaped or recorded in any manner using any form of electronic video or recording equipment by the parties. Photographs shall also be barred from an arbitration hearing.

## **RULE-A20 THE AWARD**

The following rules and procedures shall govern the determination and rendering of the final award at the conclusion of the arbitration:

- (a) The arbitrator(s) shall consider evidence that he/she (they) finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The arbitrator(s) may be guided in their determination of the award by the principles contained in the *Federal Rules of Evidence* or any other applicable rules of evidence. If there is a tripartite panel, a decision of the majority of the arbitrators shall prevail unless there is a written agreement specifying an alternate method of decision making by the arbitrators such as is common in advocacy arbitration hearings.
- (b) The arbitrator(s) may proceed with the arbitration proceedings if a party and/or their representative is absent from the pre-hearing conference or from the arbitration hearing or any part of the arbitration hearing, as long as the absent party was given proper notice and no valid request for a postponement was received and approved by the arbitrator(s). The arbitrator(s) will not form an opinion or render an award solely based on the fact that a party(s) did not attend the arbitration hearing and will require the party(s) in attendance to present their case as if the missing party was in attendance. The award shall be rendered based on the evidence, testimony and other forms of proof that are presented to prove the party(s) case in addition to the other party(s) pleadings, claims, counterclaims or other information that is available to the arbitrator(s).
- (c) If the arbitration is non binding, the arbitrator(s) shall follow all procedures as if it were a binding arbitration.
- (d) The arbitrator(s) will render an award at the conclusion of the arbitration or within thirty (30) days, if he/she (they) needs additional time to visit the jobsite, request other information or needs additional time to review the evidence and testimony presented to formulate his/her (their) final opinion. The parties and the arbitrator(s) may extend the time frame for rendering the final award if they mutually decide to do so. (See Rule A22)
- (e) The arbitrator(s) shall render an award in which one party completely prevails over the other party(s) should the facts so warrant. The arbitrator(s) may choose to make a final award that represents a compromise between the parties if the facts and evidence so warrant.
- (f) If there is no written agreement as to which party shall be responsible for the payment of the fees of the arbitrator(s) and other related costs and expenses of the arbitration, the arbitrator(s) shall, in the final award, make an allocation of the total costs related to the arbitration. The arbitrator(s) shall also be empowered to allocate the payment of all of the expenses of the parties including but not limited to the parties' attorneys fees and expenses, witness expenses, and any other applicable expenses that the arbitrator deems to be proper for reimbursement of the parties.
- (g) The arbitrator(s) will render a final award and forward that award to the case administrator for issuance to the parties and their representatives.
- (h) If the award is part of an Arb-Med process, the arbitrator shall seal and hold the award until the mediation efforts are concluded. If there is full settlement as a result of the mediation, the arbitrator shall destroy the award and its contents shall not be revealed by the arbitrator. If there is a partial settlement as a result of the mediation and one or more issues remains unresolved, the arbitrator shall review the *Mediation*

*Settlement Agreement* and shall re-write the arbitration award to address only the unresolved issues remaining after the mediation.

- (i) The case administrator may withhold and/or delay the issuance of the “Certified Copy of the Award” if fees and costs due to CDRS are not or have not been paid when due. Any party to the arbitration may elect to pay any fees and costs due and payable to CDRS in order to advance and expedite the issuance of the arbitration award.
- (j) The award shall be in writing, shall be signed by each of the arbitrators, and shall conform to any rules and regulations required by statute of jurisdictional law. If the arbitration was an advocacy arbitration and there was only one neutral arbitrator, that arbitrator chair shall be the only signature required.
- (k) Unless requested in advance and agreed to by the arbitrator(s), the arbitrator(s) shall specify the award only and shall not contain any reasoning or justification of that award. A reasoned award may be requested prior to the issuance of the arbitration award and will be issued only with the approval of the arbitrator(s) and upon the execution of a “Reasoned Award Agreement” which will include increased arbitrator’s fees as required by the arbitrator(s) and/or additional administrative fees as required by CDRS.

#### **RULE-A21 MEDIATION AND/OR WRITTEN SETTLEMENT AGREEMENT**

If the parties should agree to settle any or all of the disputed items, according to rule-A17(p), the arbitrator(s) shall review any settlement or other written agreement to determine the extent of the settlement agreements . If the arbitrator(s) determine that there is full settlement of all of the items and the written agreement or final mediation settlement agreement leaves no items in dispute, the arbitrator shall declare the arbitration closed. If there are any unresolved items, the arbitrator shall determine the appropriate time to reconvene the arbitration proceedings to determine the appropriate award for the remaining unresolved items.

- (a) If the arbitrator(s) determine that all items have been settled and there is no written agreement as to the allocation of the fees and expenses for the arbitration and related procedures, the arbitrator(s) shall render an award on the allocation of the expenses for the dispute resolution process, which may be added to the written agreement or final mediation settlement agreement prior to the parties signing that final settlement agreements or the arbitrator may issue an award stipulating the allocation of these expenses.
- (b) The arbitrator(s) shall forward a copy of the final settlement agreement and/or the arbitration award to the CDRS case administrator who shall issue a certified copy to each of the parties, according to Rule 20(h).

#### **RULE-A22 CLOSING OF THE ARBITRATION HEARING**

An arbitration hearing shall be considered closed at the latter of the end of the formal arbitration hearing, at the conclusion of a jobsite visit by the arbitrator or when the last post-hearing brief is submitted to the arbitrator after the formal hearing had been completed. Any specified time schedule for the rendering of the award shall commence from that date of the closing of the hearing. (See Rule-A20 (d)). If the arbitrator(s) has requested post-hearing briefs or will make a jobsite visit after the arbitration hearing has concluded, the hearing will not be officially closed until the last post-hearing brief has been received by the arbitrator(s) or until the close of the day upon which the jobsite visit occurs. Replies or responses to post-hearing briefs will be permitted as determined by the arbitrator. The thirty day or specified time to issue the

arbitration award shall commence at the time when the last post-hearing brief and reply shall be received by CDRS.

#### **RULE-A23 REOPENING OF THE ARBITRATION HEARING**

At the request of any party or their representative to the arbitration, or at the discretion of the arbitrator, the hearing may be reopened for just cause at any time prior to the rendering of the award if the arbitrator consents to the reopening of the arbitration hearing. The parties understand that there may be an extension of time required to render the award if the reopening of the arbitration hearing would place the rendering of the award beyond the designated time for the award to be rendered. If there was no specified date for the award to be rendered, the award will be rendered within 30 (thirty) days of the closing of the reopened hearing. (See rule A22)

#### **RULE-A24 CORRECTION AND/OR CLARIFICATION OF THE AWARD**

After receiving a certified copy of the award from CDRS, any party to the arbitration may request to the CDRS case administrator that a correction be made to the award concerning typographical, computational, grammatical, or any other similar correction that may be necessary to the award. In addition, a request for clarification shall be allowed if the parties do not completely understand the terms and conditions of the arbitration award.

- (a) Any party who wishes to request a correction must make the request in writing to the CDRS case administrator within 21 days after the receipt of the award from CDRS.
- (b) A copy of the request must also be sent to all of the other parties to the arbitration by the requesting party by certified or registered mail, return receipt requested, or by service as authorized for the commencement of a civil action as stipulated in the jurisdiction in which the arbitration was conducted.
- (c) The other parties must respond to the request within 14 days. No response from the other parties will be considered as an acceptance of the request.
- (c) After the 14 days mentioned in Rule 24(c) have expired, the CDRS case administrator will forward the request to the arbitrator(s) for review and comment and that arbitrator(s) will respond to that request within 14 days.
- (d) The CDRS Case Administrator shall have the option of sending the request for clarification directly to the arbitrator if the case administrator determines that permission or comments from the other party is not required.
- (e) The case administrator will then notify the parties as to the decision of the arbitrator(s).

After receiving a certified copy of the award from CDRS, any party to the arbitration may request a clarification of any of the provisions or specifications of the award.

- (a) Any party who wishes to request a clarification of the award must make the request in writing to the CDRS case administrator within 21 days after the receipt of the award from CDRS.
- (b) A copy of the request must also be sent to all of the other parties to the arbitration.

- (c) The request will be forwarded to the arbitrator who will decide whether he/she shall honor the request for the clarification.
- (d) The CDRS Case Administrator shall have the option of sending the request for clarification directly to the arbitrator if the case administrator determines that permission or comments from the other party is not required.
- (e) The arbitrator shall issue the clarification to CDRS within 30 days of the written decision to approve of the clarification.
- (f) At the discretion of the arbitrator, there may be additional arbitrator fees charged to the party(s) requesting the clarification as specified by the arbitrator including additional administrative costs incurred by CDRS.
- (g) The case administrator will forward the clarification to all parties to the arbitration after the additional fees and costs have been forwarded to CDRS, if applicable.

#### **RULE-A25 ARBITRATION APPEALS**

Appeals may only be filed in accordance with the applicable laws and statutes of the jurisdiction in which the arbitration is being conducted and/or as allowable by the Federal Arbitration Act. In addition, if there is an appeal process specified in the construction contract or related document of the parties, that process will be followed as long as it is not contrary to law. The appeal process shall be determined by the CDRS Senior Case Administrator as appropriate for each case. The CDRS Senior Case Administrator shall review all claims for appeal and shall determine if the claim merits the appeals process. There shall be an additional fee required for any request for appeal as determined by the CDRS Senior Case Administrator.

#### **RULE-A26 FEES, COSTS AND EXPENSES**

All fees, costs and expenses of the arbitration should be specified and agreed upon in the *Agreement to Arbitrate* and in other documents to the arbitration.

- (a) Unless there is a fee structure specified in the construction contract, all CDRS fees shall be shared equally by the parties although personal expenses such as private attorneys, experts, etc shall be the direct responsibility of the parties.
- (b) A deposit shall be required in all arbitrations as specified in the *Agreement to Arbitrate* unless there is a written agreement specifying other payment procedures. Non-payment of the deposit may necessitate the postponement or cancellation of the arbitration.
- (c) At the conclusion of the arbitration hearing, the parties will be invoiced for their applicable portion of the arbitration fees, costs and expenses plus applicable sales taxes or gross receipts tax. Failure to pay when due may delay the issuance of the certified copy of the arbitration award.
- (d) If there is a need for a jobsite or site visit, post-hearing briefs, or any other reason why the arbitration is not concluded at the end of the hearing, the parties will receive an invoice at the end of the hearing and another at the conclusion of the arbitration. Failure to pay when due may delay the issuance of the certified copy of the arbitration award.
- (e) If one of the parties fails to make payment when required, another party may make the outstanding payment to facilitate the issuance of the award and may have a cause of action against the party who was delinquent in their payment.

- (f) If there is a request for an appeal, there shall be additional fees required as specified in Rule A-25

#### **RULE-A27 UNSPECIFIED RULES AND PROCEDURES**

In accordance with Rule-17, the arbitrator(s) shall have the power and authority to rule on or establish any rule or procedure that is not covered by the CDRS *Arbitration Rules and Procedures* specified herein. If an arbitrator has not been appointed to the case, the case administrator shall have the power and authority to decide on any rule or procedure that is not covered in these rules and procedures or may defer a decision until an arbitrator has been appointed.

#### **RULE-A28 AUTHORIZED USE OF RULES AND PROCEDURES**

As these Arbitration Rules and Procedures are copyrighted by CDRS, any ADR procedure(s) that are utilized and/or any ADR procedure that is conducted according to these Rules and Procedures that is not in conjunction with a case being administered by CDRS, an individual or entity must first attain written permission from CDRS before utilizing these Rules and Procedures in any way. Any individual or entity that violates the terms of this rule shall be subject to the fees and expenses as specified by CDRS in the “CDRS Supplemental Fees and Costs Schedule”.

#### **RULE-A29 SEVERABILITY**

If any of these Arbitration Rules and Procedures are deemed to be contrary to applicable law or are declared to be void by any court or through any legal process, all other Arbitration Rules and Procedures shall remain in force and only the Rule or Procedure that is contrary to applicable law or voided shall be severed from these Arbitration Rules and Procedures.

#### **RULE-A30 OBSERVERS**

CDRS has the authority, with the approval of the arbitrator(s), to allow up to three CDRS ADR Specialists to attend all meetings or hearings as observers, for educational purposes only. These CDRS ADR Specialists will not participate or be involved with the arbitration in any way.

#### **RULE-A31 INTERSTATE AND INTERJURISDICTIONAL RULES AND PROCEDURES**

The arbitrator or arbitration tribunal shall follow the “Applicable procedural and substantive laws” that are specified in the arbitration clause, construction contract documents, construction agreements or other appropriate or related documents. If there is a question as to the “Applicable procedural or substantive laws”, the arbitrator or the arbitration tribunal shall determine the procedural and substantive laws under which the arbitration shall be conducted.

#### **RULE-A32 INTERNATIONAL ARBITRATION RULES AND PROCEDURES**

International Arbitrations conducted by CDRS shall be conducted according to the “CDRS International Arbitration Rules and Procedures” or by the rules and procedures as agreed to and specified by the parties.

#### **RULE-A33 ACCELERATED ARBITRATION PROCESS**

CDRS provides an “Accelerated Arbitration Process” for those parties who wish to conduct an arbitration in a faster and more simplified manner compared to the standard arbitration process. The accelerated arbitration process uses these arbitration rules as the basis for the

arbitration process and provides special “Accelerated Arbitration Rules and Procedures” that supersede and modify these rules and procedures as specified.

#### **RULE-A34 CHANGES, ADDITIONS AND DELETIONS OF RULES AND PROCEDURES**

Any changes, additions or deletions to these Arbitration Rules and Procedures shall be stipulated in the “Supplemental Arbitration Rules and Procedures” until they are incorporated into these Rules and Procedures at a later date.

#### **RULE-A35 POSTPONEMENT OR CANCELLATION**

The following rules and procedures shall be followed in relation to the postponement or cancellation of an arbitration.

- (a) Upon a request by any of the parties to the arbitration, the arbitrator shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation of the arbitration. If the arbitrator approves the request for a postponement, the arbitrator and/or the case administrator shall select and specify the rescheduled date(s) of the arbitration hearing. The arbitrator and/or the case administrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the rescheduled arbitration hearing.
- (b) If the arbitrator determines that the arbitration hearing needs to be postponed due to an illness or injury to one of the parties or to the arbitrator, due to inclement weather, due to non-payment of fees due to CDRS, due to travel arrangement problems or due to any other reason where the arbitrator decides that a postponement is necessary, the case administrator will notify the parties as soon as practicable as to the postponement and the date(s) of the rescheduled arbitration hearing. The case administrator shall make every effort to accommodate the requests of the parties as to a convenient date(s) to conduct the rescheduled arbitration hearing.
- (c) Any scheduled arbitration that is cancelled more than 21 days in advance of the scheduled arbitration date shall receive a 75% deposit refund less applicable administrative charges incurred and any billable time and expenses from the arbitrator. An arbitration that is cancelled between 7 and 21 days in advance of the scheduled arbitration date shall receive a 50% deposit refund less applicable administrative charges incurred. Any scheduled arbitration that is cancelled less than 7 days in advance of the scheduled date shall receive a 25% deposit refund less applicable administrative charges incurred. If the arbitration is permanently cancelled or postponed for more than 60 days, all time and expenses of the arbitrator that have accumulated and all prepaid expenses such as airfare expenses, non-refundable meeting room rentals, etc. are also fully chargeable to the parties and are to be considered reimbursable expenses and shall be deducted from any refunds.
- (d) Any dispute resolution session that is cancelled or postponed less than 72 hours prior to the scheduled session is subject to an additional \$300.00 cancellation or postponement fee, which is payable by the party(s) responsible for the cancellation or postponement. If the session is permanently cancelled, all time and expenses that have accumulated and all prepaid expenses such as airfare expenses are also fully chargeable and are reimbursable to CDRS.
- (e) Special postponement and cancellation fees may be arranged with the Administrator prior to signing the “Agreement to Arbitrate”.