



4 Toro Lane,  
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CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC

SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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## **AGREEMENT TO ARBITRATE**

REVISED 11/01/07

**BINDING ARBITRATION**

**NON-BINDING ARBITRATION**

### **PARTY INFORMATION**

The parties to this agreement are the Claimants \_\_\_\_\_  
Representing \_\_\_\_\_ Company  
and the Respondents \_\_\_\_\_  
Representing \_\_\_\_\_ Company  
and CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC called "CDRS" or the  
"Arbitrators(s)". The Claimants and the Respondents hereinafter shall be referred to as  
"Parties".

### **ENABLING AGREEMENT TO RESOLVE**

The Parties have retained CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC, of Santa Fe, New Mexico to conduct an arbitration for the purpose of settling the dispute(s) between the Parties.

The Parties recognize that if this agreement specifies non-binding arbitration, the Parties will have the option to accept the advisory opinion of the Arbitrator(s) or they will continue with a separate binding arbitration procedure or continue on with civil litigation involving a court proceeding whichever is specified in the construction contract or whichever procedure the Parties mutually accept or have agreed to for the final resolution of the dispute between the Parties.

The Parties recognize that if this agreement specifies binding arbitration, the Parties will have no choice but to accept the decision of the Arbitrator(s) as the final step in the resolution of this dispute between the Parties. The final award that is rendered by the Arbitrator(s) shall be binding on the Parties and is enforceable in a court of law. The arbitration Award may be appealed by any Party to the arbitration only according to the allowable reasons for appeal as specified in the local arbitration statutes in effect in the jurisdiction of the arbitration.

The Parties hereby authorize the Arbitrators and/or CDRS to schedule the arbitration to be conducted according to the "CDRS Arbitration Rules and Procedures", "CDRS Home Warranty Arbitration Rules and Procedures" or the "CDRS Accelerated Rules and Procedures" if applicable.

## **LEGAL AND PROFESSIONAL REPRESENTATION**

The Parties acknowledge that they have been advised by CDRS and/or the arbitrator(s) that:

- i) They should each have separate legal representation and should consult privately with their respective attorneys for independent, legal advice. This advice may be necessary prior to signing this AGREEMENT TO ARBITRATE, NOTICE OF ARBITRATION or any other documents that may be completed and executed prior to the commencement of the arbitration process or at any time during or after the arbitration hearing.
- ii) Without review and advice by their own independent, legal counsel, they may be giving up legal rights to which they are entitled, or running risks of which they are not aware.
- iii) They should seek independent tax advice from their attorneys or other qualified tax advisors to assess any possible financial or tax consequences related to the issues involved in this arbitration proceeding.
- iv) Legal representation by an attorney is not required at the arbitration proceeding; however, it is advised that the Parties have an attorney present.

## **SCOPE AND AUTHORITY**

The hearing will encompass all of the claims each of the Parties may have against the other, all such claims being reasonably known to the Parties at this time. The Parties will, at the conclusion of the hearing, after the Arbitrator(s) has rendered a final award, release each other totally from all claims pertaining to this dispute and each shall be stopped from asserting any other claims pertaining to this dispute in the future. If other disputes materialize during this arbitration process or after the final award is rendered upon the conclusion of this arbitration proceeding, the Parties may enter into a separate dispute resolution proceeding. They may not be added to this arbitration proceeding unless there is a total agreement between the Parties and the Arbitrator(s) to add those items to this arbitration.

The Arbitrator(s) authority shall be as stipulated in the CDRS Arbitration Rules and Procedures and as specified in other related CDRS arbitration documents as executed between the parties.

## **POSTPONEMENT AND CANCELLATION**

Upon a request by a one or both of the Parties, the Arbitrator(s) or CDRS Administrator shall determine if there is good cause or compelling circumstances that would merit a postponement or cancellation. Please refer the CDRS "Fees and Costs" section of the CDRS website for standard cancellation and postponement charges. Non-receipt of the properly executed required documents or of the initial filing fee or deposit by the due date may be considered cause for the CDRS to postpone or cancel the arbitration. An arbitration that is postponed or cancelled less than seventy-two (72) hours prior to the scheduled arbitration is subject to an additional \$300.00 fee which is payable by the Party (or Parties) responsible for the postponement or cancellation.

**COST OF ARBITRATION**

The Arbitrator(s) shall be compensated based on the amount of time spent on the case plus reimbursable out of pocket and related expenses. The rate of compensation is \$\_\_\_\_\_ per hour plus applicable taxes. A minimum charge of five (5) hours shall be charged for each arbitration session unless a prior written agreement is in effect. Travel expenses are also reimbursable. All CDRS administrative fees, after the initial filing fee, are included in the hourly arbitration fees mentioned above. A full description of chargeable time, out of pocket and related expenses are contained in the Fees and Costs schedule located on the CDRS website [www.constructiondisputes-cdrs.com](http://www.constructiondisputes-cdrs.com).

A deposit shall be required in the amount of \$\_\_\_\_\_ which shall be due and payable to CDRS prior to \_\_\_\_\_. Each party shall remit their applicable share of the deposit due. The balance due after the completion of the arbitration may be due and payable at the completion of the arbitration hearing, subject to additional charges that may be due after the arbitration award has been written and submitted to CDRS and as otherwise specified in the CDRS Arbitration Rules and Procedures.

Unless there is a written agreement in the construction contract as to the payment of the arbitration costs, the Parties agree to share the cost of the dispute resolution process equally although personal attorneys and witnesses or specialists are the direct responsibility of each Party and their fees and expenses shall be the responsibility of the individual Parties.

Prior to the commencement of the arbitration, the Parties may mutually agree, in writing, to allow the Arbitrator to include an allocation of the costs including all of the expenses in the arbitration including attorney's fees and related costs and the costs of the witnesses or specialists or other applicable costs and expenses in the rendering of the final award. The Arbitrator may allocate all of the costs relative to the arbitration to one Party or may allocate a portion of the costs to each Party.

**ACCEPTANCE**

*CLAIMANTS:*

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

*RESPONDENTS:*

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_