



**CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC**  
**Specializing in Mediation & Arbitration**

3600 Rodeo Lane, Suite B7  
Santa Fe, NM 87507

New Mexico: 505-474-9050  
Fax Phone: 505-474-9061

Out of State: 888-930-0011  
Email: [cdrs@cdrsllc.com](mailto:cdrs@cdrsllc.com)

Website: [www.constructiondisputes-cdrs.com](http://www.constructiondisputes-cdrs.com)

**DRB RULES AND PROCEDURES**  
**TABLE OF CONTENTS**

October 1, 2006

<b>DRB RULE 1</b>	<b>DRB RULES AND PROCEDURES</b>
<b>DRB RULE 2</b>	<b>DRB RULES AND PROCEDURES – CONFLICTS</b>
<b>DRB RULE 3</b>	<b>DRB COMPOSITION</b>
<b>DRB RULE 4</b>	<b>DRB SCOPE AND DUTIES AND AUTHORITY</b>
<b>DRB RULE 5</b>	<b>DRB FORMATION AND/OR CREATION</b>
<b>DRB RULE 6</b>	<b>NUMBER OF DRBs</b>
<b>DRB RULE 7</b>	<b>SELECTION AND APPOINTMENT OF NEUTRAL DRB MEMBERS</b>
<b>DRB RULE 8</b>	<b>DRB NEUTRAL MEMBER RESIGNATION</b>
<b>DRB RULE 9</b>	<b>DISQUALIFICATION OF A DRB NEUTRAL MEMBER</b>
<b>DRB RULE 10</b>	<b>SELECTION OF NON-NEUTRAL DRB MEMBERS</b>
<b>DRB RULE 11</b>	<b>DRB CHAIR RESPONSIBILITIES AND DUTIES</b>
<b>DRB RULE 12</b>	<b>DRB NEUTRAL MEMBER RESPONSIBILITIES AND DUTIES</b>
<b>DRB RULE 13</b>	<b>DRB NON-NEUTRAL MEMBER RESPONSIBILITIES AND DUTIES</b>
<b>DRB RULE 14</b>	<b>DRB ADMINISTRATOR RESPONSIBILITIES AND DUTIES</b>
<b>DRB RULE 15</b>	<b>CDRS CONSTRUCTION EXPERTS</b>
<b>DRB RULE 16</b>	<b>DRB NEUTRAL MEMBER/ADMINISTRATOR NEUTRALITY</b>
<b>DRB RULE 17</b>	<b>DRB NEUTRAL MEMBER AND ADMINISTRATOR CONFIDENTIALITY</b>
<b>DRB RULE 18</b>	<b>DRB NEUTRAL MEMBER AND ADMINISTRATOR CHALLENGES</b>
<b>DRB RULE 19</b>	<b>DRB GENERAL OPERATIONS</b>
<b>DRB RULE 20</b>	<b>DRB ADR PROCEDURES</b>
<b>DRB RULE 21</b>	<b>DRB COMMUNICATIONS</b>
<b>DRB RULE 22</b>	<b>REGULARLY SCHEDULED DRB MEETINGS</b>
<b>DRB RULE 23</b>	<b>SPECIAL DRB MEETINGS AND SPECIAL ADVISORY HEARINGS</b>
<b>DRB RULE 24</b>	<b>JOBSITE VISITATIONS</b>
<b>DRB RULE 25</b>	<b>TIME LIMITS FOR DECISIONS AND AWARDS</b>
<b>DRB RULE 26</b>	<b>SUBSEQUENT LEGAL PROCEEDINGS</b>
<b>DRB RULE 27</b>	<b>HOLD HARMLESS</b>
<b>DRB RULE 28</b>	<b>FEES, COSTS AND BILLING PROCEDURES</b>
<b>DRB RULE 29</b>	<b>DRB POSTPONEMENT AND TERMINATION</b>
<b>DRB RULE 30</b>	<b>DRB DURATION</b>
<b>DRB RULE 31</b>	<b>UNSPECIFIED RULE</b>
<b>DRB RULE 32</b>	<b>AUTHORIZED USE OF DRB RULES AND PROCEDURES AND FORMS</b>
<b>DRB RULE 33</b>	<b>SEVERABILITY</b>
<b>DRB RULE 34</b>	<b>SUPPLEMENTAL DRB RULES AND PROCEDURES</b>



CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC  
**Specializing in Mediation & Arbitration**

3600 Rodeo Lane, Suite B7  
Santa Fe, NM 87507

New Mexico: 505-474-9050  
Fax Phone: 505-474-9061

Out of State: 888-930-0011  
Email: [cdrs@cdrsllc.com](mailto:cdrs@cdrsllc.com)

Website: [www.constructiondisputes-cdrs.com](http://www.constructiondisputes-cdrs.com)

## **DISPUTE REVIEW BOARD – RULES AND PROCEDURES**

October 1, 2006

© Copyright by CDRS 2006 all rights reserved

### **DRB RULE 1. DRB RULES AND PROCEDURES**

These DRB Rules and Procedures shall govern all activities of and relating to the DRB including but not limited to the formation of the DRB, the selection of the DRB Members, the scope and responsibilities of the DRB, the procedures and activities of the DRB and all matters to come before the DRB in the performance of the duties and responsibilities of the DRB as specified in the DRB Agreement and related documents.

### **DRB RULE 2. DRB RULES AND PROCEDURES - CONFLICTS**

If these DRB Rules and Procedures should conflict with any rule or procedure that is specified in any CDRS agreement, form or document that will be utilized by a DRB, the rule or procedure specified in the agreement, form or document shall take precedence over these DRB Rules and Procedures.

### **DRB RULE 3. DRB COMPOSITION**

All DRBs shall be comprised of three CDRS Neutral Members and if required, it shall also contain Representatives of the Parties according to the DRB Agreement that has been negotiated between the Parties, resulting in a five person DRB. After the commencement of the duties of the DRB, the composition of the DRB may be amended only by written agreement of all of the Parties to the DRB Agreement.

### **DRB RULE 4. DRB SCOPE OF DUTIES AND AUTHORITY**

The scope of responsibilities and the authority of the DRB shall be stipulated in the DRB Agreement that has been executed by the Parties. The scope of responsibilities and the authority of the DRB may be amended only by written agreement of all of the Parties to the DRB Agreement.

#### **DRB RULE 5. DRB FORMATION AND/OR CREATION**

As a general rule, the DRB shall be formulated in the early stages of the development of the construction process. With the assistance of a CDRS DRB Administrator, the construction project Owner (Owner) shall develop and design the DRB to handle the scope of responsibilities required by the Owner including Advisory Authority and/or Final and Binding Authority involving Dispute Resolution Processes or other related procedures. The composition of the DRB including the number of Neutral Members and Non-Neutral Members shall be established along with the involvement of other Parties other than the Owner and General Contractor. After the General Contractor (GC) has been selected, the scope and responsibilities of the DRB may be amended only with the written agreement of the Owner, GC, and the DRB chair, if a DRB chair has been selected and appointed.

#### **DRB RULE 6. NUMBER OF DRBs**

Depending on the complexity of the construction project, it may be advisable to form more than one DRB, each with a specific specialization, to handle the specified scope and responsibilities required of the specialized DRB. Each DRB will follow the same DRB Rules and Procedures and shall function as an independent DRB separate from any of the other DRBs. It is not unusual to have several DRBs with Advisory Authority only while the “ADR DRB” may handle all “Final and Binding” or other ADR procedures that might be necessary or as required by the other DRBs.

A common CDRS DRB format authorizes the DRB to issue advisory opinions and the opportunity to follow up their advisory opinions with mediation or co-mediation if the Parties do not come to an agreement as a result of their advisory opinion. If the mediation efforts are unsuccessful, final and binding decisions shall be referred to an ADR DRB or to outside binding arbitration or to litigation.

#### **DRB RULE 7. SELECTION AND APPOINTMENT OF DRB NEUTRAL MEMBERS**

On a typical DRB requiring three neutral DRB Members, one Member is selected by the Owner, one member is selected by the GC and the DRB Chair is selected by mutual consent of the Owner and GC. It is not unusual for the parties to allow the two Mediators to select the DRB chair or to allow the two Neutrals to recommend a DRB chair to the parties for their approval. If the Owner and the GC cannot mutually agree on the DRB Chair, the CDRS DRB Administrator, after consulting with the Owner, GC and two other DRB Neutral Members, shall select and appoint the DRB Chair. The DRB administrator may also consult with the CDRS Senior Case Administrator prior to selecting the DRB Chair. All members of the DRB must be selected from the *CDRS National or International Panels of Construction ADR Specialists* who have completed the appropriate CDRS training programs. The DRB Chair must be selected from among the Members of the *CDRS Panel of DRB Specialists*. If the DRB has final and binding authority, only those members of the *CDRS Panel of DRB Specialists* may be selected to serve on the DRB.

#### **DRB RULE 8. DRB NEUTRAL MEMBER RESIGNATION**

If a DRB Neutral Member is unable to fulfill their responsibilities as a DRB Member due to illness, personal or family matters, conflicts in scheduling or for any other reason, the Owner or the GC that originally selected that Member shall select the replacement DRB Member as

specified in Rule 7. If the Member is the DRB Chair, the Owner and the GC may mutually select one of the other two neutral members to become the DRB Chair or may mutually select a new DRB Chair from the *CDRS Panel of DRB Specialists*. If the new DRB chair is selected from the two other neutral members on the DRB, the replacement neutral member required to complete the DRB shall be selected by the party who originally selected the neutral member who will now be serving as the DRB chair. If the Owner and the GC cannot mutually agree on the replacement DRB Chair, the CDRS DRB Administrator, after consulting with the Owner, GC, two other DRB Neutral Members, if applicable, and the CDRS Senior Case Administrator, shall select and appoint the DRB Chair. The CDRS DRB Administrator will oversee the execution of the new Neutral Member Agreement including any adjustments necessary in the fee structure of the replacement DRB Member. The payment of fees and expenses of the retiring DRB Neutral Member shall be as specified in the DRB Agreement.

#### **DRB RULE 9. DISQUALIFICATION OF A DRB NEUTRAL MEMBER**

A Neutral Member of the DRB may be disqualified and replaced by mutual consent of the Parties to the DRB Agreement. A new DRB Member shall be selected according to the procedures as specified in DRB Rule 7 and DRB Rule 8. The payment of fees and expenses of the disqualified Member shall be as specified in the DRB Agreement. If a DRB Member is disqualified while participating in the formation and issuance of an advisory opinion, a mediation or an arbitration, the DRB Chair shall determine the procedures to be used in the continuance of the ADR process. If the Neutral Member disqualified is the DRB Chair, the DRB Administrator shall determine the procedures to be used in the continuance of the ADR process after consulting with the two other DRB neutral members.

#### **DRB RULE 10. SELECTION OF NON-NEUTRAL DRB MEMBERS**

If a DRB Agreement specifies and establishes a DRB consisting of five Members, the three Neutral Members shall be selected and appointed according to Rule 7. It is common practice for the Owner and the GC to each select and appoint a DRB Member from other than the *CDRS National and International Panel of Construction ADR Specialists*, to represent their interests on the DRB. All negotiations and the execution of the Agreements between the Parties and their non-neutral representatives to the DRB shall be handled by the Owner or the GC as applicable. Any fees and/or reimbursements of expenses of the non-neutral Members of the DRB shall be the responsibility of the Owner and the GC as applicable. Replacement of non-neutral members of the DRB shall be made by the Owner or the GC as applicable.

#### **DRB RULE 11. DRB CHAIR RESPONSIBILITIES AND DUTIES**

The DRB Chair shall have the responsibilities and duties as specified in the DRB Agreement and any other responsibilities and/or duties that are mutually agreed upon by the Parties and the DRB Chair and other responsibilities as specified in these Rules and Procedures or in any other related DRB documents and/or forms.

#### **DRB RULE 12. NEUTRAL DRB MEMBER RESPONSIBILITIES AND DUTIES**

The DRB Neutral Members of the DRB shall have the responsibilities and duties as specified in the DRB Agreement and any other responsibilities and/or duties that are given to them by the DRB Chair, the mutual agreement of the Parties and the DRB Chair and/or are specified in these Rules and Procedures or in any other related DRB documents or forms.

If there are multiple DRBs being utilized on a construction project, a Neutral DRB Member may serve in different capacities, including serving as an expert, and as a Neutral Member on multiple DRBs. After a DRB has been established, any change or addition to a DRB Neutral

Member's responsibilities must be approved by both parties and the DRB chair, and may occur only after the DRB Administrator has had the opportunity to complete the appropriate documents required.

### **DRB RULE 13. NON-NEUTRAL DRB MEMBER RESPONSIBILITIES AND DUTIES**

The Non-Neutral Members of the DRB shall have the responsibilities and duties as specified in the DRB Agreement and any other responsibilities and/or duties that are given to them by the DRB Chair, the mutual agreement of the Parties and the DRB Chair and/or are specified in these Rules and Procedures or in any other related DRB documents and forms. Typically the Non-Neutral DRB Members participate in all general matters that come before the DRB and participate in the issuance of advisory opinions issued by the DRB. It is not unusual for the non-neutral DRB members to participate in the discussions leading to an advisory opinion, but to not be included in the construction of the advisory opinion which will be written by the three neutral members only. After an advisory opinion has been issued by the DRB, the Non-Neutral DRB Members present and discuss the advisory opinions issued by the DRB with the Party who they represent on the DRB. Non-Neutral Members may not participate in any of the ADR processes other than in the advisory opinion process, that are provided by the Neutral DRB Members other than in an advisory manner or as requested by the DRB Chair, a mediator or an arbitrator.

### **DRB RULE 14. CDRS DRB ADMINISTRATOR RESPONSIBILITIES AND DUTIES**

A DRB Administrator shall be appointed by the CDRS Senior Case Administrator to work with the Construction Project Owner (Owner) in the early stages of the project's development. The Administrator shall work with the Owner in the formation of the DRB including but not limited to: selecting the type and composition of the DRB, the authority and responsibility of the DRB, selecting the entities that shall participate in the DRB process (including the general contractor, subcontractors, their subcontractors, material suppliers, service providers, etc.) selecting the neutral members of the DRB from the appropriate CDRS Panels, selecting the ADR processes that will be utilized by the DRB including but not limited to advisory opinions, mediation, binding mediation, arbitration, med-arb, arb-med, etc., and providing any other information that might be required by the Owner (and the GC, if applicable) in the formation of the DRB.

The Administrator shall assist the Owner in preparing the information necessary to include the specifics of the DRB to the bidders on the construction project and shall prepare an estimate of the related costs of the DRB to be disseminated to all bidders on the construction project.

The Administrator shall assist the Owner and the General Contractor, upon request, with the execution of all DRB Agreements between all of the other individuals or entities involved in the construction project such as subcontractors, their subcontractors, material suppliers, service providers, etc. and will assist the Parties with the negotiation and execution of the DRB Member Agreements with each of the Neutral DRB Members. The Administrator shall provide each Party to the DRB with a portfolio containing the photographs and biographies of each of the Neutral Members of the DRB.

The Administrator shall also provide a final set of "DRB Rules and Procedures" as amended by the Parties and/or the DRB Chair.

The Administrator shall also perform all duties as required by the normal operation of the DRB including but not limited to the following: notifying each DRB Member of any DRB meetings, jobsite visits or related activities, issuing "Certified Copies" of all findings and recommendations, compiling the fees and expenses of the DRB Neutral Members and issuing a monthly invoice for services rendered to the appropriate Parties, and other related duties as requested by the DRB Chair or as specified in these rules and procedures or in other related

DRB Agreements, forms or documents. All requests for advisory hearings or any ADR processes shall be forwarded to the DRB administrator utilizing with the appropriate DRB form of document.

#### **DRB RULE 15. CDRS CONSTRUCTION EXPERTS**

All members of the *CDRS National and International Panels of Construction ADR Specialists* may be retained to serve as a construction expert to be utilized by the DRB if a special expertise is required to assist the DRB Members and the Parties to the DRB in the issuance of an advisory opinion or in deliberations or in testimony during an ADR procedure conducted by the DRB. The DRB Administrator shall assist the Parties in the selection of a CDRS Specialist and with the execution of the documents required to provide the services of the CDRS Construction Specialist to the DRB. If there are multiple DRBs being utilized on the construction project, CDRS Specialists may serve as a construction expert on multiple DRBs. After a DRB has been established, any change or addition to a DRB Neutral Member's responsibilities may occur only after the DRB Administrator has had the opportunity to complete the appropriate documents required to allow the DRB Neutral Member to provide the additional required services.

#### **DRB RULE 16. DRB NEUTRAL MEMBER/ADMINISTRATOR NEUTRALITY**

Prior to selection and appointment, the DRB Neutral Members and the DRB Administrator shall disclose to the Parties to the DRB agreement, any and all former activities, personal relationships, business relationships and any other occurrence that might be perceived by a reasonable person to affect the neutrality of the DRB Neutral Member or Administrator. The responsibility to disclose any such information shall be continuous and shall continue until the duties and responsibilities of the DRB have been completed.

A Member's or the Administrator's disclosure should not be considered as an admission that the Member or Administrator considers the disclosed information to affect his/her ability to remain neutral and impartial. It is provided for informational purposes only.

#### **DRB RULE 17. DRB NEUTRAL MEMBER/ADMINISTRATOR CONFIDENTIALITY**

All matters involving the activities and deliberations of the DRB shall be kept in confidence by the DRB Neutral Members and the DRB Administrator unless written permission by all of the Parties to the DRB is obtained. All DRB matters may be openly discussed between the Neutral Members of the DRB and/or the DRB Administrator unless they are instructed to keep an issue confidential by the DRB Chair or are requested to keep an issue confidential by one of the Parties. All matters discussed during mediation, co-mediation or any other ADR process shall be kept confidential by the DRB Neutral Member unless written permission is granted by the applicable Party(s) to share the confidential information with others.

#### **DRB RULE 18. DRB NEUTRAL MEMBER AND/OR ADMINSTRATOR NEUTRALITY AND CONFIDENTIALITY CHALLENGES**

Any Party to the DRB may submit a challenge to the DRB Chair if they perceive that a DRB Member and/or the DRB Administrator have breached their confidentiality or neutrality according to DRB Rule 16 and Rule 17. If the DRB Chair is in question, the challenge shall be submitted to the DRB Administrator. A special administrative hearing shall be held to determine the accuracy of the challenge and shall be conducted by the DRB Chair and/or the DRB Administrator, if applicable.

The DRB Chair or the DRB Administrator, if applicable, shall determine the accuracy and importance of the challenge. If the Parties to the DRB mutually agree to eliminate the Neutral Member or the Administrator who is being challenged, that Neutral Member or Administrator will be disqualified. If only one Party questions the neutrality or the confidentiality of a DRB Neutral Member or the Administrator, the DRB Chair or DRB Administrator, if applicable, shall determine whether or not to disqualify the Member or Administrator in question. If a DRB Neutral Member is disqualified, the DRB Neutral Member shall be replaced according to the procedures specified in DRB Rule 7 and Rule 8. If the DRB Administrator shall be disqualified, a new DRB Administrator shall be appointed by the CDRS Senior Case Administrator with the assistance of the DRB Chair and through consultation with the Parties.

### **DRB RULE 19. DRB GENERAL OPERATIONS**

After the DRB Chair has been selected and all appropriate Agreements have been executed, the DRB Chair shall have the responsibility to conduct all activities of the DRB necessary to fulfill and complete the duties and responsibilities of the DRB with the assistance of the DRB administrator. The DRB Chair shall possess the authority to appoint any of the other Neutral DRB Members to oversee or conduct any business of the DRB including their appointment to serve as a mediator and/or arbitrator to conduct any ADR procedure that is stipulated in the DRB Agreements, forms or other documents. The DRB Chair shall also have the authority to assign any duties and/or assignments to the non-neutral members of the DRB as required to assist in the performance of the activities of the DRB. The DRB Administrator shall continue to assist the DRB at the request of the DRB chair and shall perform all duties and responsibilities that are specified in these DRB Rules and Procedures and as specified in DRB related DRB Agreements, forms and other documents.

### **DRB RULE 20. DRB ADR PROCEDURES**

The following procedures shall govern the ADR processes as specified in the ADR Agreements, forms and documents in effect and as agreed upon by the Parties to the DRB:

1. All mediations and/or arbitrations shall be governed and conducted according to the appropriate CDRS Mediation Rules and Procedures and/or the CDRS Arbitration Rules and Procedures in effect on the effective date of the execution of the first completed DRB Agreement.
2. All requests for ADR shall be as specified in the DRB Agreements and related documents and shall follow the processes as specified. All ADR processes shall be initiated through the submission of a "DRB Advisory Opinion Request Form", a "DRB Mediation Request Form", and/or a "DRB Arbitration Request Form". By mutual consent of the Parties, any ADR procedure may be requested at any time. (i.e. – If the Parties feel that an issue is important enough and/or if time is of the essence, they may choose to proceed to directly to binding arbitration, bypassing an advisory opinion and/or mediation or co-mediation.)
3. The DRB Chair shall appoint a mediator to handle each requested mediation or binding mediation, if applicable, between any of the entities that are involved in the DRB process.
4. If a Co-Mediation is requested, it shall be handled by the two DRB Neutral Members other than the DRB Chair. If one of the mediators is disqualified due to a conflict of interest, disclosure or for any other reason, the other non-chair Neutral DRB Member shall conduct a single mediation with the Parties. If both Neutral Members are disqualified, the DRB Chair shall select and appoint either one or two replacement

mediators, as applicable, from the *CDRS National or International Panels of Construction ADR Specialists*.

5. All med-arb or arb-med procedures shall be handled by the two DRB Neutral Members other than the DRB Chair. The DRB Chair shall appoint the mediator and the arbitrator for each dispute. (With the mutual consent and by request of the Parties, the DRB Chair, with his/her consent, may serve as the arbitrator.) If one or both DRB Neutral Members are disqualified or are unavailable for any reason to serve, the DRB Chair shall appoint a replacement mediator and/or arbitrator from the *CDRS National or International Panels of Construction ADR Specialists*.
6. All arbitration procedures, other than those mentioned in #3, #4, #5 above, shall be handled by all three of the DRB Neutral Members with the DRB Chair serving as the tripartite arbitration panel chair. If the arbitration process follows a mediation or co-mediation process, and if one of the Parties involved in the mediation or co-mediation feels that private and/or confidential information was provided to a mediator or to both mediators during the mediation or co-mediation procedure, a challenge as to the neutrality of the mediator shall be filed with the DRB chair. The challenge is uncontestable and the DRB Chair shall proceed with the arbitration as a sole arbitrator. Neither of the two disqualified DRB Neutral Members may be involved in any deliberations with the DRB Chair and the DRB Chair shall render his/her award without any consultation with the two other DRB Neutral Members.
7. All five members of the DRB, if applicable, shall be involved in the issuing of an advisory opinion according to DRB Rule 13.
8. Special Advisory Hearings (SAH) shall be conducted according to the rules and procedures as specified in the various CDRS DRB Advisory Opinion forms and documents.
9. Advisory Opinions, Mediation Settlement Agreements and Arbitration Awards shall be forwarded by the DRB Chair to the DRB Administrator who will issue a "Certified Copy" of the advisory opinion, mediation settlement agreement or arbitration award. Under no circumstances shall an advisory opinion, mediation settlement agreement or arbitration award be given directly to the Parties by the DRB Chair or any other Member of the DRB.

**NOTE: ALL ADR PROCESSES SHALL BE CONDUCTED IN ACCORDANCE WITH THE REGULATIONS, LAWS, STATUTES AND APPLICABLE MEDIATION AND ARBITRATION ACTS AND RELATED LEGAL REQUIREMENTS IN EFFECT IN THE JURISDICTION IN WHICH THE ADR PROCESS IS BEING CONDUCTED. ANY LOCAL REGULATION, ACT, LAW OR STATUTE FOUND TO BE IN CONFLICT WITH THESE RULES AND PROCEDURES SHALL TAKE PRECEDENCE ONLY OVER THE RULES AND PROCEDURES THAT ARE IN CONFLICT AND THAT AFFECTED RULE SHALL BE SEVERABLE FROM THESE RULES AND THE REMAINDER OF THE DRB RULES AND PROCEDURES SHALL REMAIN IN FORCE.**

#### **DRB RULE 21. DRB COMMUNICATIONS**

All formal communications between the Parties to the DRB and the DRB shall be in writing and shall be directed to the DRB Chair. No personal or private "ex-parte" communications shall be conducted between any Party and a Neutral Member of the DRB. If there is any question as to the appropriateness of the communication, it should be sent to all DRB Members and to the other Party(s). If for some reason, the DRB Chair is unreachable and/or unavailable, the Party(s) may contact the DRB Administrator if the matter is of immediate importance. The

DRB Administrator shall be authorized to perform any administrative functions as may be required in the absence or unavailability of the DRB Chair. Allowable written communications include e-mail, fax, Fed-Ex or similar delivery service and regular US mail service. It is recommended that all written communications be of a type that will provide a record of its being sent.

Voice communications shall be allowable between the DRB Chair and any of the Parties on matters that are not of substance to the DRB proceedings and only as are necessary for scheduling or other administrative issues. Any questions relating to proper communications may be directed to the DRB Administrator who will determine the appropriate method of communication that is necessary to handle the issue in question.

#### **DRB RULE 22. REGULARLY SCHEDULED DRB MEETINGS**

DRB Regularly Scheduled DRB meetings shall be conducted according to the agenda as prepared by the DRB Chair. The agenda must be submitted to all of the Members of the DRB and to the Parties no less than fourteen days prior to the regularly scheduled meeting. The agenda may be amended by written submission of the DRB Members or of the Parties to the DRB Chair up to seven days prior to the scheduled DRB meeting. The agenda may be further amended within seven (7) days of the DRB meeting only with the approval of the DRB Chair. The DRB meeting shall be conducted under the direction of the DRB Chair.

In addition to the DRB Members, others including the Owner, GC, attorneys, witnesses, specialists, etc. may attend and/or participate in the discussions at the DRB meeting only with the approval of the DRB Chair. The DRB Chair will have the option to conduct the entire meeting as an open forum or may decide to conduct the meeting or any portion thereof in a private "executive session" with only the DRB members in attendance according to the controversial nature or complexity of the matters that will come before the DRB. If the DRB Chair determines that an issue is of a sensitive nature and the DRB consists of five members, the DRB Chair shall have the option to conduct a "DRB Special Executive Session" where the two non-neutral DRB Members will not be allowed to participate and/or be in attendance, however, all advisory opinions must involve input and discussion of the five members of the DRB.

Written submissions by other than DRB Members directed to the DRB Chair may be admitted to the DRB discussions at the discretion of the DRB Chair.

#### **DRB RULE 23. SPECIAL DRB MEETINGS AND SAH HEARINGS**

Special DRB meetings and Special Advisory Hearings (SAH) may be scheduled by the DRB Chair at the request of any Party to the DRB. At least a three day advance notice must be given to the DRB members unless they all mutually agree to hold the meeting at an earlier time. The SAH shall be conducted according to the rules and procedures specified in these rules and procedures and as specified in other CDRS DRB forms and documents. The special meeting will be held at the earliest convenient date for the Members of the DRB. The meeting will be conducted by the DRB Chair according to the rules and procedures as specified in DRB Rule 22.

#### **DRB RULE 24. JOBSITE VISITS**

Jobsite visits by the DRB may be scheduled to coincide with a regularly scheduled DRB meeting, may be regularly scheduled according to a pre-determined jobsite visit schedule of its own or may be scheduled as requested or required by the Parties or by the DRB Chair. All DRB Members should be present at all jobsite visits, however, if one or more of the DRB Members is unable to attend the jobsite visits, the DRB Chair may elect to allow the jobsite

visit to occur. At no time is any Neutral DRB Member to make a jobsite visit by themselves except as indicated elsewhere in this rule. DRB Non-Neutral Members, if applicable, may visit the jobsite at any time.

In addition to the DRB Members, the Parties to the DRB should have a representative who is not a DRB Member in attendance at all jobsite visits. The DRB Chair may elect to allow the visit to proceed if one or more of the Parties to the DRB are not in attendance as long as proper notice was given to the Parties indicating the time, date and other particulars of the jobsite visit. If the jobsite visit is scheduled as a result of a specially scheduled emergency DRB meeting, the DRB Chair may elect to continue with the jobsite visit if one or more of the Parties or one or more of the DRB Members are not in attendance.

It shall be the responsibility of the GC to assure that the jobsite is in a safe and accessible condition for the DRB Members. Protective clothing and proper weather gear shall be provided for the DRB members as specified in the DRB Agreement. The DRB Chair shall have the responsibility to determine whether the jobsite is in a safe and accessible condition for the DRB Members. As a general rule, all DRB Members shall remain together as a group during a jobsite visit.

If a jobsite visit is required as a result of a binding mediation or an arbitration procedure, the jobsite visit may be made by the mediator(s) or arbitrator(s) alone as long as a representative from each Party is in attendance during the jobsite visit.

#### **DRB RULE 25. TIME LIMITS FOR DECISIONS AND AWARDS**

After a Special Advisory Hearing, the “Certified Copy” of the official Advisory Opinion shall be issued by the DRB Administrator within sixty days of the close of the Special Advisory Hearing, unless the Parties and the DRB Chair agree on a different time schedule for the issuance of the Advisory Opinion. If a jobsite visit is required prior to the issuance of the Advisory Opinion, the sixty day period shall commence at the end of the day of the jobsite visit.

After an arbitration hearing has concluded, the “Certified Copy” of the arbitration award shall be issued by the DRB Administrator within thirty days of the close of the arbitration hearing. If a jobsite visit is required prior to the issuance of the Arbitration Award, the thirty day period shall commence at the end of the day of the jobsite visit. After an arbitration hearing has concluded and “post hearing briefs” are requested by the arbitrator(s), the thirty day period shall commence after the last post hearing brief has been received by the arbitrator(s).

After a mediation or binding mediation has been concluded, the “Certified Copy” of the Mediation Settlement Agreement shall be issued by the DRB Administrator within thirty days of the conclusion of the mediation procedure. If a mediator, conducting a binding mediation, determines that a jobsite visit is required prior to issuing his/her decision on the unresolved issues, the thirty day period shall commence at the end of the day of the jobsite visit.

The issuance of an advisory opinion, mediation settlement agreement or an arbitration award may be delayed according to conditions specified in DRB Rule 28.

#### **DRB RULE 26. SUBSEQUENT LEGAL PROCEEDINGS**

All “Certified Copies” of Advisory Opinions, Mediation Settlement Agreements and Arbitration Awards shall be admissible in any further or related legal proceedings unless the Parties have agreed to some other procedure.

As the SAH is not open to the general public and the proceedings are confidential in nature. The parties shall agree that under no circumstances shall a DRB Neutral Member, who has participated in a SAH, be issued a subpoena or any other legal request to appear in any subsequent legal or administrative procedure including but not limited to arbitration and/or litigation.

As mediations are conducted under a veil of confidentiality, all notes of the mediator(s) are destroyed after the Final Settlement Agreement has been completed. Under no circumstances shall a mediator be issued a subpoena or any other legal request to appear in any subsequent legal or administrative procedure including but not limited to arbitration and/or litigation.

Although arbitrations are not conducted under a veil of confidentiality, the arbitration process is in itself a confidential process. As a result, after the arbitration award has been issued by the arbitrator(s), all notes of the arbitrator(s) are destroyed along with any evidence or related documents that has not been returned to the Parties. Under no circumstances shall an arbitrator be issued a subpoena or any other legal request to appear in any subsequent legal or administrative procedure including but not limited to another arbitration and/or litigation.

At no time shall the Parties or any of their representatives cause a subpoena or any similar legal request to be issued to a DRB Neutral Member, CDRS independent Contractor or any of the employees of CDRS to appear in any subsequent legal or administrative proceeding. At no time shall the Parties issue a subpoena or demand the production of any records, notes, documents or work product of the DRB Members or of CDRS other than a "Certified Copy" of an Advisory Opinion, Mediation Settlement Agreement or Arbitration Award. To the extent that the Parties may have a right to issue a subpoena or demand the production of related information as specified above, the Parties do hereby waive that right by virtue of the utilization of these DRB Rules and Procedures.

**IF A PARTY OR ANY OF ITS REPRESENTATIVES CASUSES A SUBPOENA OR SIMILAR LEGAL DOCUMENT TO BE ISSUED VIOLATING THE TERMS OF THIS RULE, THE RESPONSIBLE PARTY SHALL PAY THE COSTS OF THE DRB NEUTRAL MEMBER, CDRS INDEPENDENT CONTRACTOR OR CDRS INCURRED TO RESIST THE SUBPOENA OR OTHER LEGAL DOCUMENT INCLUDING ATTORNEY'S FEES OR AND OTHER EXPENSES RELATED TO THE DEFENSE OF THE DRB NEUTRAL MEMBER OR OF CDRS AGAINST THE SUBPOENA OR OTHER LEGAL DOCUMENT.**

#### **DRB RULE 27. HOLD HARMLESS**

**Each DRB Member shall be held harmless for any personal or professional liability arising from or related to DRB Activities including but not limited to the issuance of an advisory opinion, conducting or participating in a mediation or arbitration or participating in any other DRB related activity. To the fullest extent permitted by law, the Owner(s), the General Contractor and any other Party involved in the DRB process shall defend, indemnify and hold harmless all DRB Members, CDRS Independent Contractors and CDRS for any claims, losses, demands, costs and damages, or economic losses arising out of or related to DRB Members carrying out their responsibilities as a DRB Member or for any other DRB activities related to the DRB process. The foregoing indemnity is a joint and severable obligation.**

#### **DRB RULE 28. FEES, COSTS AND BILLING PROCEDURES**

If applicable, CDRS may charge administrative fees during the initial DRB formation process prior to the commencement of the duties of the DRB. These fees shall be determined prior to the commencement of the DRB formation process and shall be stipulated in the "CDRS DRB Formation Agreement" that shall be executed between the Owner (or Parties) and CDRS.

All fees and costs shall be as stipulated in the various DRB Agreements and/or applicable Fees and Costs Schedules that are executed between the Parties and/or DRB Neutral Members. The CDRS DRB Administrator shall review the monthly invoices submitted by the DRB Neutral Members and shall invoice the applicable Party(s) each month for their applicable share of the fees and related costs of the DRB Neutral Members. CDRS's continuing administrative charges shall be included in the DRB Neutral Members' fees. Additional administrative charges may be incurred by the Parties if the CDRS Administrator is requested or must perform additional administrative duties beyond the normal administrative functions related to the DRB. Special DRB meetings, jobsite visits, hearings or other special DRB activity shall be billed individually and shall be subject to the same terms and conditions of the regular monthly invoices. Applicable taxes may be added to the fees and related costs. All CDRS DRB invoices are due and payable within fifteen days from the date of the invoice or as specified in a written agreement between CDRS and the Parties.

**CDRS reserves the right to postpone, delay or cancel the activities of a DRB including the issuance of an advisory opinion, mediation settlement agreement or an arbitration award, if payments are not made according to these terms.**

If one of the Parties is negligent or late in their payment of a DRB monthly or special invoice, the other party may make that payment on behalf of the delinquent Party in order to keep the DRB process on schedule in the continuance of handling the required duties and responsibilities of the DRB. If the delinquent Party then makes payment to CDRS, CDRS will refund the payment the other Party made on behalf of the delinquent Party.

#### **DRB RULE 29. DRB POSTPONEMENT AND/OR TERMINATION**

The activities of a DRB may be postponed or terminated by mutual consent of all of the Parties who signed the DRB Agreement. Written notification of the postponement or cancellation shall be sent by certified mail, return receipt requested, to the CDRS DRB Administrator and the DRB Chair.

Under special circumstances, if one Party to the DRB requests a postponement or termination of DRB activities, the DRB Chair, if he/she determines that there is "good cause", such as illness or inclement weather, for the postponement or termination, may postpone or cancel the DRB activities as requested.

DRB termination will become effective only after all outstanding balances due and payable to CDRS have been paid in full. If there are other fees and costs that have not been charged to the Parties at the time of the request for termination, the CDRS DRB Administrator shall invoice the Parties as soon as he/she can assemble the appropriate charges. As soon as these charges are paid in full, the termination shall become effective.

#### **DRB RULE 30. DRB DURATION**

All DRB Agreements shall remain in effect until the completion of the construction project or until it is terminated according to DRB Rule 29. At the request of the parties, the DRB may continue to provide DRB related services after the completion of the construction project, especially mediation and/or arbitration services that may be required subsequent to the completion of the construction project.

### **DRB RULE 31. UNSPECIFIED RULE**

Any issue that arises related to the activities of the DRB that are not covered in these Rules and Procedures shall be handled as specified in other DRB documents such as a DRB Agreement, DRB form or DRB related document. If the issue is not covered in these Rules and Procedures and is also not covered in any other CDRS DRB document, how the issue shall be handled or decided shall be determined and/or decided by the DRB Chair. His/her decision shall be binding on the Parties, DRB Members or others involved in the DRB process. If there is a question as to the meaning or interpretation of any rule, procedure, process, etc., the DRB Chair shall issue his/her determination of the meaning or interpretation of the issue in question and it shall be binding on the Parties, DRB Members or others involved in the DRB processes. If the issue is of an administrative nature, how the issue shall be handled or decided shall be determined and/or decided by the CDRS DRB Chair after consultation with the DRB Administrator.

### **DRB RULE 32. AUTHORIZED USE OF RULES AND PROCEDURES AND FORMS**

As these CDRS DRB Rules and Procedures and CDRS DRB Forms and Documents are copyrighted by CDRS, any DRB or ADR procedures that are utilized and/or any ADR procedure or DRB that is conducted according to these Rules and Procedures or utilizes any CDRS DRB forms or documents that is not in conjunction with a case or DRB being administered by CDRS, must first obtain written permission from CDRS before utilizing these DRB Rules and Procedures or DRB forms or documents in any way. Any individual or entity that violates the terms and provisions of this rule shall be subject to the fees and expenses as specified by CDRS in the "CDRS Supplemental Fees and Costs Schedule".

### **DRB RULE 33. SEVERABILITY**

If any of these DRB Rules or Procedures are deemed to be contrary to applicable law or is declared to be void by any court or through any legal process, all other DRB 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 DRB Rules and Procedures.

### **DRB RULE 34. SUPPLEMENTAL DRB RULES AND PROCEDURES**

The effective Date of these DRB Rules and Procedures is October 1, 2006. Any changes, additions or deletions to these DRB Rules and Procedures shall be published in the "CDRS Supplemental DRB Rules and Procedures". The DRB Administrator shall include these Supplemental DRB Rules and Procedures in the DRB Portfolios that are given to each Party at the commencement of the DRB process. The DRB Administrator will bring any new changes to the DRB Rules and Procedures that are issued after the commencement of the DRB activities to the attention of the DRB Chair. The DRB Chair shall bring them to the attention of the Parties. They shall become effective for the operations of the DRB only with the mutual consent of the Parties and the DRB Chair.

The Supplemental DRB Rules and Procedures shall be incorporated into the DRB Rules and Procedures at the time of the next regular revision and/or printing of the DRB Rules and Procedures.