



CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC  
Specializing in Mediation & Arbitration

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## SUGGESTED CONTRACT LANGUAGE For CONSTRUCTION-RELATED CONTRACTS AND AGREEMENTS

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**ALTHOUGH ALL OF THESE CONTRACT CLAUSES HAVE BEEN WRITTEN BY OR REVIEWED AND APPROVED BY CDRS ATTORNEYS, WE RECOMMEND THAT YOU DO NOT CHANGE ANY CONTRACTS OR UTILIZE THIS SUGGESTED CONTRACT LANGUAGE UNTIL YOU HAVE SHOWN IT TO AND RECEIVED THE APPROVAL OF YOUR ATTORNEY.**

With today's high cost of litigation, general contractors are turning to mediation, arbitration or combined med-arb procedures to settle disputes between themselves and their clients. Mediation, Binding Mediation, Med-Arb and Arbitration usually provide a quicker, less formal dispute resolution alternative to standard legal procedures at a fraction of the cost.

In construction-related mediation, binding mediation, med-arb and arbitration, it is a definite advantage to have a mediator/arbitrator who has extensive experience in the construction field, especially if the dispute is of a specialized nature such as green building/remodeling. It is also recommended to specify an alternative dispute resolution provider in your contract, such as Construction Dispute Resolution Services, LLC if you are satisfied that the provider is experienced in the construction field, properly trained and competent to conduct your mediation, med-arb or arbitration. If you do not specify a provider, you will need to go through a provider selection process that will most likely cost a significant amount of money and will add a great deal of extra time to your dispute resolution process.

Below is suggested dispute resolution language to be utilized, as a clause in your construction contract, to assure that you will not find yourself involved in a lengthy and costly litigation. You will see very simple clauses for those of you who do not want long and involved construction contracts, and some longer and more detailed clauses for those of you who wish to specify an exact procedure that helps to alleviate any questions as to the dispute resolution process. Keep in mind that the more

specific your contract, the less problems you will encounter when a dispute develops. As these are only suggested clauses, you can take a few of the provisions from any of the clauses and construct your own dispute resolution clause for your contract. As long as you specify a provider of the specified dispute resolution process and the Rules and Procedures to be followed, it is not necessary to stipulate many rules and procedures in your contract as they will be covered in the specified provider's Rules and Procedures.

If your dispute will be of a smaller nature, CDRS recommends the binding mediation process that virtually assures you of a one-session final and binding resolution to your dispute. Binding Mediation has proven to be the least expensive, simple and most expeditious dispute resolution process that offers a final and binding resolution to a dispute. Binding mediation is a final resolution process that allows the parties to work together with the assistance of a trained mediator before he/she makes the final and binding decisions without the formality, extra expense and extra time needed for a full blown arbitration. Med-arb also offers a similar finality as binding mediation or binding arbitration, however, according to the Med-Arb Agreement, it may be necessary for the med-arb session to be held in two separate sessions; mediation first, followed by arbitration with a new arbitrator.

Keep in mind that you can specify certain processes for specified dollar amounts such as specifying binding mediation to settle all disputes under a specified dollar amount and med-arb for all disputes over a specified dollar amount. This is just an example as specified amounts should vary depending on the particulars of each construction project. An example of contract language to specify "Graduated Processes" is included in this section.

If you really want to keep your dispute resolution costs to a minimum and the construction project is a residential project, the "Residential Construction Performance Guideline" contract clause (below) should be used as an introduction to the dispute resolution section of your construction contract and should be followed by a mediation, binding mediation, med-arb, or arbitration clause.

Also remember that the parties are giving up their constitutional right to a trial by a judge or jury by selecting an Alternative Dispute Resolution (ADR) alternative process to settle all disputes. You will see that all recommended contract clauses begin with an acknowledgement that the parties knowingly are giving up their right to use the court system in favor of a more expeditious, simple and less expensive process that should yield a more fair and equitable decision or award than would be rendered through the court system.

## **DISPUTE RESOLUTION CLAUSES**

### **DISPUTE RESOLUTION** **Residential Construction Performance Guidelines**

If a dispute develops between the parties to this contract, the parties will first look to the current edition of the "Residential Construction Performance Guidelines" (RCPG) as published by the National Association of Home Builders, Washington DC. Both the Owner and contractor agree that the RCPG shall be used as the minimum acceptable level of construction that will be acceptable by the parties. If the disputed item is covered in the RCPG, the owners agree that if the construction in question has been built to meet the level of construction as specified in the RCPG, that they will accept the construction as being acceptable and the contractor agrees to bring the construction of the disputed item up to the guideline if the construction in question does not meet the level of construction as specified in the RCPG. Any issue relating to the RCPG that can not be settled by the Parties shall be settled through binding mediation, binding arbitration, med-arb, etc. as specified elsewhere in the construction contract or agreement.

**DISPUTE RESOLUTION**  
**Mediation (Non-Binding)**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

If a dispute develops between the parties to this contract, the parties will submit to non-binding mediation to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. The mediation shall be conducted by and according to the Mediation Rules and Procedures of Construction Dispute Resolution Services, LLC. The parties shall be bound by the terms and conditions as set forth in the *Settlement Agreement* that is executed by the parties. Both parties shall 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.

NOTE: Mediation is only binding if the parties can come to an agreement. To assure final and binding resolution to a dispute, binding mediation, binding arbitration or litigation should be specified following the mediation provisions of your construction contract to guaranty that the parties will know what process they will follow to arrive at a final and binding resolution to the dispute.

**CDRS recommends the use of mediation prior to binding arbitration or litigation.**

**DISPUTE RESOLUTION**  
**Mediation (Pre-Mediation Binding Mediation or Arbitration Elective)**  
**(Parties Share Expenses)**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

If a dispute develops between the parties to this contract, they will submit to non-binding mediation to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. Prior to the beginning of the mediation process, the parties may agree that if there is one or more disputed items that remain unresolved at the end of the mediation, the parties will proceed with binding mediation where the mediator will render a final and binding decision on those unresolved items, or the parties may elect to submit the remaining unresolved items to a med-arb procedure where a new and separate binding arbitration session may be scheduled to settle any unresolved issues remaining after the mediation session has been concluded. The parties must mutually agree to utilize binding mediation or arbitration or the parties will be bound only to participate in the non-binding mediation process. The mediation and/or arbitration shall be conducted by and according to the Mediation and/or Arbitration Rules and Procedures of Construction Dispute Resolution Services, LLC. The Settlement Agreement and/or Arbitration Award shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction. Both parties shall 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.

**DISPUTE RESOLUTION**  
**Mediation (Pre-Mediation Binding Mediation or Arbitration Elective)**  
**(Parties Share Expenses up to the Binding Mediation or Arbitration Award)**  
**(Prevailing Party)**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

If a dispute develops between the parties to this contract, they will submit to mediation to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. Prior to the beginning of the mediation process, the parties may agree that if there is one or more disputed items that remain unresolved at the end of the mediation, the parties will proceed with binding mediation where the mediator will render a final and binding decision on those unresolved items, or the parties may elect to submit the remaining unresolved items to a med-arb procedure where a new and separate binding arbitration session will be scheduled to settle any unresolved issues remaining after the mediation session has been concluded. The parties must mutually agree to utilize binding mediation or arbitration or the parties will be bound only to participate in the mediation process. The mediation and/or arbitration shall be conducted by and according to the Mediation and/or Arbitration Rules and Procedures of Construction Dispute Resolution Services, LLC. Both parties shall share the cost of the dispute resolution process equally up to and including the mediation settlement agreement or arbitration award 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. As part of the decision of the mediator in binding mediation or as part of the Arbitration Award, the mediator or arbitrator shall award the prevailing party reasonable attorney's fees and reasonable expenses in any manner in which the mediator or arbitrator feels is fair and equitable to the parties. The Mediation Settlement Agreement and/or Arbitration Award shall be binding on the parties and shall be enforceable in any court of competent jurisdiction.

**DISPUTE RESOLUTION**  
**Arbitration (Split Fees and Costs)**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

If a dispute develops between the parties to this contract, the parties will submit to binding arbitration to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. The arbitration shall be conducted by and according to the rules and procedures of Construction Dispute Resolution Services, LLC. The Arbitration Award shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction. Both parties shall 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.

**DISPUTE RESOLUTION**  
**Arbitration (Prevailing party receives fees and costs)**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

If a dispute develops between the parties to this contract, the parties will submit to binding arbitration to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. The arbitration shall be conducted by and according to the rules and procedures of Construction Dispute Resolution Services, LLC. The Arbitration Award shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction. Both parties shall share the cost of the dispute resolution process equally up to and including the arbitration hearing 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. As part of the Arbitration Award, the arbitrator(s) shall allocate the fees and costs of the arbitration along with reasonable attorney's fees and other reasonable costs and expenses to the prevailing party in any manner that the arbitrator(s) considers to be reasonable.

**DISPUTE RESOLUTION**  
**Arbitration – Three Arbitrators – (FOR ANTICIPATED LARGE DISPUTES)**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

If a dispute develops between the parties to this contract, the parties will submit to binding arbitration to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. The arbitration shall be conducted by three arbitrators. The arbitration shall be conducted by and according to the rules and procedures of Construction Dispute Resolution Services, LLC (CDRS). Both Primary Parties shall each select one arbitrator from the *CDRS National Panel of Construction ADR Specialists* according to the CDRS Arbitration Rules and Procedures. The two selected arbitrators shall mutually select the third arbitrator, who shall serve as the Arbitrator Chair, from the *CDRS National Panel of Construction ADR Specialists*. Each arbitrator shall serve as a neutral arbitrator and shall not represent or favor any of the parties to the arbitration. In the event that the parties can not or do not select an arbitrator or the two selected arbitrators can not or do not select the Chief Arbitrator within the time limits specified by CDRS, the CDRS Senior Case Administrator shall select and appoint that arbitrator. The Arbitration Award shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction. Both parties shall share the cost of the dispute resolution process equally up to and including the arbitration hearing 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. As part of the Arbitration Award, the arbitrator(s) shall allocate the fees and costs of the arbitration along with reasonable attorney's fees and other reasonable costs and expenses to the prevailing party in any manner that the arbitrator(s) considers to be reasonable.

Note: The parties may not choose to have the arbitrator(s) allocate reasonable attorney's fees and reasonable costs and expenses to the prevailing party in any manner he/she/they feel is appropriate and may specify that the costs will be shared equally by the parties.

**DISPUTE RESOLUTION**  
**Binding Mediation**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

- Either Party may initiate the dispute resolution process by first writing a letter to the other party indicating the issue(s) in dispute and the proposed manner in which to settle the dispute. The recipient of the letter shall respond within ten (10) days to the proposed solution. The recipient shall either agree to the proposed solution or propose an alternative solution including the possibility of a cash settlement. Correspondence shall continue in like manner until a settlement is reached or there the parties realize that correspondence will not settle the dispute.
- If correspondence does not resolve the dispute, the parties or their representatives shall meet on at least one occasion and attempt to resolve the matter on their own. The time and place, within fourteen (14) days of the second party's response, shall be mutually agreeable to both parties.
- If this meeting does not produce a resolution, the parties agree to submit to binding mediation as provided by and according to the Rules and Procedures of Construction Dispute Resolution Services, LLC. (CDRS) Both parties acknowledge that if there is one or more disputed items that remain unresolved at the end of the mediation, the mediator will render a final and binding decision on those unresolved items. A Mediation Settlement Agreement shall be written and signed by the parties indicating the terms and conditions of the issues upon which the parties have come to an agreement. A separate Mediation Settlement Agreement shall be written and signed by the parties indicating the mediator's decisions on the unresolved issues remaining after the mediation process has concluded. These Mediation Settlement Agreements shall be enforceable in any court of competent jurisdiction.
- Either party may initiate the binding mediation process with CDRS by executing a "Request for Dispute Resolution Services" and sending it to Construction Dispute Resolution Services, LLC. The Agreement to Mediate and the Binding Mediation Addendum must be executed by both parties within fourteen (14) days of receipt by the parties. Construction Dispute Resolution Services, LLC shall schedule the Binding Mediation within thirty (30) days of notification and execution of the Agreement to Mediate and the Binding Mediation Addendum.
- Both parties shall 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.

Note: The parties may choose to have the mediator allocate reasonable attorney's fees and reasonable costs and expenses to the prevailing party in any manner he/she/they feel is appropriate as opposed to having the costs shared equally by the parties.

**DISPUTE RESOLUTION**  
**Residential Construction Performance Guidelines and Arbitration**

- Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. If a dispute develops between the parties to this contract, the parties will first look to the current edition of the “Residential Construction Performance Guidelines” (RCPG) as published by the National Association of Home Builders, Washington DC. Both the Owner and contractor agree that the RCPG shall be used as the minimum acceptable level of construction that will be acceptable by the parties. If the disputed item is covered in the RCPG, the owners agree that if the construction in question has been built to meet the level of construction as specified in the RCPG, that they will accept the construction as being acceptable and the contractor agrees to bring the construction of the disputed item up to the guideline if the construction in question does not meet the level of construction as specified in the RCPG. Any issue relating to the RCPG that can not be settled by the Parties shall be settled through binding arbitration as specified below.
- If the disputed item is not covered in the RCPG, the parties agree to submit to binding arbitration as provided by and according to the rules and procedures of Construction Dispute Resolution Services, LLC. The Arbitration Award shall be binding on the parties and may be enforced in any court of competent jurisdiction.
- Either party may initiate the arbitration process by executing a “Request for Dispute Resolution Services” and sending it to Construction Dispute Resolution Services, LLC. Both parties agree to return the fully executed arbitration agreements and other related forms and documents to Construction Dispute Resolution Services, LLC. within fourteen (14) days of receipt
- Both parties shall 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.

Note: The parties may choose to have the arbitrator(s) allocate reasonable attorney’s fees and reasonable costs and expenses to the prevailing party in any manner he/she/they feels is appropriate as opposed to having the costs shared equally by the parties.

**DISPUTE RESOLUTION**  
**Residential Construction Performance Guidelines and Binding Mediation**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

- If a dispute develops between the parties to this contract, the parties will first look to the current edition of the “Residential Construction Performance Guidelines” (RCPG) as published by the National Association of Home Builders, Washington DC. Both the Owner and contractor agree that the RCPG shall be used as the minimum acceptable level of construction that will be acceptable by the parties. If the disputed item is covered in the RCPG, the owners agree that if the construction in question has been built to meet the level of construction as specified in the RCPG, that they will accept the construction as being acceptable and the contractor agrees to bring the construction of the disputed item up to the guideline if the construction in question does not meet the level of construction as specified in the RCPG. Any

issue relating to the RCPG that can not be settled by the Parties shall be settled through binding mediation as specified below.

- If the disputed item is not covered in the RCPG, the parties agree to submit to binding mediation as conducted by and according to the rules and procedures of Construction Dispute Resolution Services, LLC. Both parties acknowledge that if there is one or more disputed items that remain unresolved at the end of the mediation, the mediator will render a final and binding decision on those unresolved items and his/her decision will be written on a separate settlement agreement and shall be signed by both parties.
- Either party may initiate the binding mediation process by executing a "Request for Dispute Resolution Services" and sending it to Construction Dispute Resolution Services, LLC.
- Both parties agree to return the fully executed binding mediation agreements within fourteen (14) days of receipt to Construction Dispute Resolution Services, LLC.
- Both parties shall 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.

Note: The parties may choose to have the mediator allocate reasonable attorney's fees and reasonable costs and expenses to the prevailing party in any manner he/she/ feels is appropriate as opposed to having the costs shared equally by the parties.

**DISPUTE RESOLUTION**  
**Binding Mediation – Arbitration (Graduated Processes)**

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedures to be followed in the event any controversy or dispute should arise out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract.

- Any dispute less than \$\_\_\_\_\_ in value shall be subject to binding mediation as conducted by and according to the Rules and Procedures of Construction Dispute Resolution Services, LLC where the parties acknowledge that if there is one or more disputed items that remain unresolved at the end of the mediation, the mediator will render a final and binding decision on those unresolved items and his/her decision will be binding on the parties. A Mediation Settlement Agreement shall be written to reflect the terms and conditions as agreed to by the parties and a separate Mediation Settlement Agreement shall be written to reflect the decisions of the mediator in reference to the unresolved issues after the mediation session has been completed. Those Mediation Settlement Agreements shall be enforceable in any court of competent jurisdiction.
- Any dispute over \$\_\_\_\_\_ but less than \$\_\_\_\_\_ in value shall be subject to mediation followed by binding arbitration by a single arbitrator as conducted by and according to the Rules and Procedures of Construction Dispute Resolution Services, LLC. A Mediation Settlement Agreement shall be written to reflect the terms and conditions as agreed to by the parties during the mediation session. After the mediation session has concluded, the parties shall select an arbitrator according to the Arbitration Rules and Procedures of Construction Dispute Resolution Services, LLC. The arbitration shall be conducted by and according to the Rules and Procedures of Construction Dispute

Resolution Services, LLC. The Arbitration Award shall be binding on the parties and shall be enforceable in any court of competent jurisdiction.

- Any dispute over \$\_\_\_\_\_ in value shall be subject to mediation followed by binding arbitration by three arbitrators as conducted by and according to the Rules and Procedures of Construction Dispute Resolution Services, LLC. A Mediation Settlement Agreement shall be written to reflect the terms and conditions as agreed to by the parties during the mediation session. After the mediation session has concluded, the parties shall each select one arbitrator from the *CDRS National Panel of Construction ADR Specialists*. The two selected arbitrators shall mutually select a third arbitrator from the *CDRS National Panel of Construction ADR Specialists* who shall serve as the Chief Arbitrator. The arbitration shall be conducted by and according to the Rules and Procedures of Construction Dispute Resolution Services, LLC. The Arbitration Award shall be binding on the parties and shall be enforceable in any court of competent jurisdiction.
- Any dispute whose value can not be determined or can not be agreed upon by the parties shall be subject to either binding mediation, mediation-arbitration – single arbitrator or mediation-arbitration – three arbitrators as mutually agreed to by the parties. If the parties can not come to an agreement as to the process to follow to settle the dispute, the dispute shall be settled using the mediation-arbitration process as conducted by a single mediator and a single arbitrator. Whichever process is utilized, the process shall be conducted by and according to the Rules and Procedures of Construction Dispute Resolution Services, LLC. The Mediation Settlement Agreement and/or Arbitration Award shall be enforceable in any court of competent jurisdiction.
- Both parties shall 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.

NOTE: The above is an example of suggested contract language and can be modified in any manner including having the mediator or arbitrator determine which party shall be considered the prevailing party and as such should have their reasonable attorney fees and reasonable costs and expenses paid for in any percentage that the arbitrator shall determine to be fair and equitable to the parties. Typical Graduated Process contract clauses only specify one dollar amount that will determine whether the dispute will be settled by binding mediation or arbitration. Parties may mutually decide to eliminate the mediation process and can proceed directly to arbitration if the parties feel that time is of the essence and that mediation would most likely be unsuccessful.

**ALTERNATIVE DISPUTE RESOLUTION ALLOWS THE PARTIES TO CUSTOMIZE ANY ADR PROCESSES THAT WILL PROVIDE THEM WITH THE BEST PROCESSES TO BE UTILIZED TO SETTLE ALL DISPUTES THAT WILL BE FINAL AND BINDING UPON THE PARTIES.**