



CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC  
SPECIALIZING IN MEDIATION & ARBITRATION & DISPUTE REVIEW BOARDS

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## **CONSTRUCTION SETTLEMENT PANEL** **RULES AND PROCEDURES**

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

These Construction Settlement Panel (CSP) Rules and Procedures shall govern all activities of and relating to the CSP including but not limited to the formation of the CSP, the selection of the CSP Members, the scope and responsibilities of the CSP, the procedures and activities of the CSP and all matters that involve CDRS and any Members of the CSP or other Members of the *CDRS National or International Panel of Construction ADR Specialists* in the normal performance of the duties and responsibilities of the CSP as specified in the CSP Agreement and related documents. These Rules and Procedures shall be utilized in conjunction with the CDRS DRB Rules and Procedures when applicable.

### **CSP RULE 2. CSP RULES AND PROCEDURES – CONFLICTS**

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

### **CSP RULE 3. CSP COMPOSITION**

All CSPs shall be comprised of as many Members as is required by the Owner and/or the General Contractor (Parties). All Members of the CSP shall be selected from the *CDRS National or International Panel of Construction ADR Specialists*. CSP Members may be selected to serve as advisors, experts, mediators, arbitrators or any combination of these ADR specialties as long as the CDRS Specialist has been approved by CDRS to function in the required capacities.

Additional Members may be added to the CSP through mutual agreement between the Parties. Additional Members of the CSP may be delayed in the performance of their duties until the proper paperwork has been completed between the Parties, the Member and CDRS.

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

The scope of responsibilities and the authority of the Members of the CSP shall be as stipulated in the *CSP Agreement*, the *CSP Member Agreements* and related CSP documents. The scope of responsibilities and the authority of the Members of the CSP may be amended only by written agreement of CDRS and all of the Parties to the CSP Agreement.

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

As a general rule, the CSP shall be formulated in the early stages of the construction project, usually immediately after the General Contractor has been awarded the bid for the construction project, however, a CSP may be formed at any time in the construction process. To begin the process of forming a CSP, the Parties should contact CDRS. The CDRS Senior Case Administrator, after consultation with the Parties, will assign a CSP Administrator to assist the Parties in the formation of the CSP and to handle the duties and responsibilities of a CSP Administrator.

It is not unusual for a project Owner to decide to utilize the services of a CSP well before the project goes out to bid. If this is the situation, the CSP Administrator will assist the Owner in selecting the concepts to be used in developing the CSP and will provide the Owner with a projected cost of the CSP if the Owner would like the CSP to be included in the bid by the General Contractors who will be bidding on the construction project.

## **CSP RULE 6. NUMBER OF CSPs**

As a general rule, only one CSP is formed for each construction project to provide the required services as requested by the Parties to the CSP Agreement. If the project is a large construction project where multiple CSPs shall be required, the CDRS CSP Administrator will assist the Parties in the formation of the multiple CSPs. It is not unusual to see multiple CSPs on a construction project where several CSPs provide experts and specialists to assist in providing advisory functions to the Parties while another CSP contains Members who will provide ADR services such as mediation, arbitration and related ADR procedures. If there are multiple CSPs, each shall follow these same CSP Rules and Procedures.

## **CSP RULE 7. SELECTION AND APPOINTMENT OF CSP MEMBERS**

All members of the CSP shall be selected from the *CDRS National or International Panels of Construction ADR Specialists*. All members shall be selected through the mutual consent of the Parties. The CDRS CSP Administrator shall assist the Parties in the selection of the members of the CSP. As a general rule, the DRB Chair shall have the responsibility to assist the Parties in the selection of a CSP Member(s) to serve in a specific capacity. If the Parties can not mutually select a Member(s) of the CSP, the DRB Chair shall have the responsibility to select and appoint the CSP Member(s) to service the Parties. If there is no DRB in existence, in the event that the Parties can not come to an agreement as to the selection of a CSP Member(s) to service the Parties, the CDRS CSP Administrator shall have the authority to select and appoint the CSP Member(s) to service the Parties unless the Parties have selected a CSP Chair who

shall be responsible to work with the Parties in the selection and appointment of the CSP Members..

## **CSP RULE 8. CSP MEMBER RESIGNATION**

If a CSP Member is unable to fulfill their responsibilities as a CSP Member due to illness, personal or family matters, conflicts in scheduling or for any other reason, the CSP Member shall notify the CSP Administrator. The Administrator shall notify the Parties and shall assist the Parties with the selection of a replacement CSP Member.

## **CSP RULE 9. DISQUALIFICATION OF A CSP MEMBER**

A CSP Member may be disqualified and eliminated as a member of the CSP by mutual consent of the Parties. A written request for the disqualification and elimination of the CSP Member must be submitted to the CSP Administrator by either Party. If only one Party requests the disqualification of one of the CSP Members, the DRB Chair shall conduct an investigation and shall rule on the disqualification. If there is no DRB functioning on the project, the CDRS CSP Chair or CSP Administrator, as appropriate, shall conduct an investigation and shall rule on the disqualification. A CSP Member shall immediately be disqualified if the request for disqualification that is signed by both Parties. If applicable, the CSP Chair or CSP Administrator shall assist the Parties with the selection of a replacement CSP Member. The disqualification and elimination of the CSP Member shall become effective after all outstanding fees and expenses related to the CSP Member have been received by CDRS.

## **CSP RULE 10. UTILIZATION OF CSP MEMBERS**

Any request for the utilization of a member of the CSP shall be made to the CSP Administrator using the "CSP Request for Dispute Resolution Services" form. Only with the permission of the CSP Administrator shall the Parties have direct contact with a Member of the CSP including the CSP Chair. All arrangements for a CSP Member to serve in an advisory capacity or to serve as a mediator or arbitrator or to serve as a fill-in DRB Member or as support for a DRB shall be coordinated by the CSP Administrator.

As a general rule, the DRB Chair shall have the responsibility to assist the Parties in the selection of a CSP Member(s) to serve in a specific capacity. If the Parties can not mutually select a Member(s) of the CSP, the DRB Chair shall have the responsibility to select and appoint the CSP Member(s) to service the Parties. If there is no DRB in existence, in the event that the Parties can not come to an agreement as to the selection of a CSP Member(s) to service the Parties, the CSP Chair or CSP Administrator, as appropriate, shall have the authority to select and appoint the CSP Member(s) to service the Parties.

Prior to the commencement of the activities of any CSP Member, the CSP Administrator shall make certain that the Parties have executed all appropriate agreements, addendums or other documents necessary to facilitate the requested activities of the CSP Member(s). These agreements shall include but not be limited to CSP Agreements, CSP Member Agreements, Expert Service Agreements, Mediation Agreements, Binding Mediation Agreements, Co-Mediation Agreements, Med-Arb Agreements, Arb-Med Agreements, Arbitration Agreements and other related agreements, addendums or related documents.

## **CSP RULE 11. CDRS CONSTRUCTION EXPERTS**

All members of the *CDRS National and International Panels of Construction ADR Specialists* who have not been pre-selected to serve on the CSP may be retained to serve as a construction expert or specialist by the Parties and shall accordingly be added as a member of the CSP. CDRS ADR Specialists may be retained by the Parties as a member of the CSP though the mutual consent of the Parties or may be individually retained by either Party to serve as an expert in any mediation or arbitration or litigation proceeding. Any CDRS ADR Specialist who is retained by either party as an advocate shall be retained outside of the CSP Panel and shall be retained through the normal procedures available through CDRS in obtaining the services of one of the CDRS ADR Specialists.

The arrangements for the services of the CDRS ADR Specialist shall be requested through the CSP Administrator, DRB Administrator or from CDRS directly as appropriate. A "CDRS Expert Services Agreement" shall be completed for the services of a CDRS construction expert who serves as an advocate for any individual Party.

## **CSP RULE 12. CSP ADR PROCEDURES**

If there is a CSP and there are no DRBs on the project, if the Parties select and appoint a CSP Chair, he/she shall have the responsibilities to oversee the workings of the CSP as specified within these Rules and Procedures. If no Chair is selected on a CSP and that CSP functions without any DRBs on the project, the CDRS CSP Administrator shall have the responsibilities to oversee the workings of the CSP as specified within these Rules and Procedures. If there is one DRB on the project, if the Parties do not select and appoint a chair of the CSP, the DRB Chair shall have the responsibilities to oversee the workings of the CSP as specified within these Rules and Procedures. If there are two or more DRBs on the project, the Parties may select a CSP Chair who shall have the responsibilities to oversee the workings of the CSP as specified within these Rules and Procedures unless the Parties mutually select one of the DRB Chairs who shall have the responsibilities to oversee the workings of the CSP as specified within these Rules and Procedures.

Requests for ADR services shall be made by filing a "CSP Request for Dispute Resolution Services" with the CSP Administrator. All mediations shall be conducted according to the *CDRS Mediation Rules and Procedures*. All arbitrations shall be conducted according to the *CDRS General Arbitration Rules and Procedures*. All Mediation Settlement Agreements and Arbitration Awards shall be forwarded by the CSP Mediator(s) or Arbitrator(s) to the CDRS CSP Administrator or DRB Administrator who shall issue a "Certified Copy" of the Mediation Settlement Agreement or Arbitration Award to the Parties. Under no circumstances shall a Mediation Settlement Agreement or Arbitration Award be issued by the mediator or arbitrator directly to the Parties.

Mediators and arbitrators shall be selected through the mutual agreement of the Parties as required from among the CSP Members. If the Parties can not agree on a CSP Member to serve as a mediator(s) or an arbitrator(s), the DRB Chair or CSP Administrator, as appropriate, shall select and appoint a CSP Member to serve as a mediator or arbitrator as required. If a tripartite arbitration panel is required, all three members shall be selected by the Parties and the Chair of the arbitration panel shall be mutually selected and appointed by the Parties. If the Parties can not agree on the Chair for the arbitration panel, the three arbitrators selected shall select the Chair of the

Panel from among themselves or may refer the selection to the DRB Chair or CSP Administrator as appropriate.

If the Parties request a Special Advisory Hearing involving the advisory opinion of either one or three CSP Members, the Special Advisory Hearing (SAH) shall follow the rules and procedures as specified in the *CDRS DRB Rules and Procedures* related to Special Advisory Hearings and as contained and specified in the related DRB forms and documents relating to the Advisory Hearing processes. The request shall be submitted to the CSP Administrator using the "CSP Request for Advisory Opinion" form. The Parties shall mutually select one of the CSP Members to serve as the Chair. If the Parties can not agree on who shall serve as the Chair, the DRB Chair or the CSP Administrator, as appropriate, shall select and appoint the CSP Member who will serve as the Chair. The Advisory Opinion or Recommendation rendered by the CSP shall be forwarded to the CSP Administrator who shall issue a "Certified Copy" of the Advisory Opinion or Recommendation to the Parties. Under no circumstances shall an Advisory Opinion be issued directly to the Parties by the CSP.

### **CSP RULE 13. CSP MEMBER AND ADMINISTRATOR NEUTRALITY**

After being selected to serve on the CSP, the CSP Members and the CSP Administrator shall divulge and shall bring to the attention of the Parties any and all former activities, personal relationships, business relationships and any other occurrence that might be perceived to affect their neutrality. The responsibility to divulge any information that might be perceived to affect the neutrality of the CSP Member or CSP Administrator shall be continuous and shall continue until the duties and responsibilities of the DRB have been completed.

### **CSP RULE 14. CSP MEMBER AND ADMINISTRATOR CONFIDENTIALITY**

All matters involving the activities of the CSP shall be kept in confidence by the CSP Members and the CSP Administrator unless written permission by all of the Parties to the CSP is obtained. All CSP matters may be openly discussed between the CSP Members and/or with the CSP Administrator and/or the DRB Chair, if applicable, unless they are instructed to keep an issue confidential by one of the Parties. All matters discussed during a mediation, arbitration or any other activity of the CSP shall be kept confidential by the CSP Member, DRB Member, and the CDRS Administrator unless written permission is granted by the applicable Parties to share the information with others.

### **CSP RULE 15. NEUTRALITY AND CONFIDENTIALITY CHALLENGES**

Any Party to the CSP may submit a challenge to the CSP Administrator if they perceive that a CSP Member has breached their confidentiality or neutrality according to CSP Rule 13 and 14. If the challenge is in reference to the neutrality and/or confidentiality of the CSP Administrator, the challenge shall be submitted to the CDRS Senior Case Administrator. A special administrative hearing shall be held by the CSP Chair, the CSP Administrator or the CDRS Senior Case Administrator as appropriate to determine the accuracy of the challenge.

If the Parties to the CSP mutually agree to eliminate the CSP Member or the CSP Administrator, the Member or Administrator shall be disqualified and eliminated from the CSP. If only one Party questions the neutrality and/or confidentiality of a CSP Member or CSP Administrator, a special administrative hearing will be conducted and the final decision shall be made by the CSP Chair or CSP Administrator or DRB Chair if applicable or the CDRS Senior Case Administrator as appropriate. If a CSP Member is disqualified and eliminated, he/she shall be replaced according to the procedures specified in CSP Rule 7. If the CSP Administrator is disqualified and eliminated, the Administrator shall be replaced by the CDRS Senior Case Administrator after consultation with the Parties.

## **CSP RULE 16. SPECIAL CSP MEETINGS**

Special CSP meetings may be scheduled at the request of the Parties. The CSP Members attending the meeting shall be selected by the mutual consent of the Parties or by the CSP Chair or DRB Chair or CSP Administrator as appropriate. The agenda for the meeting shall be prepared by the Parties with the assistance of the CSP Administrator. The meeting shall be held at the earliest convenient date for the CSP Members and the Parties. The meeting will be co-chaired and conducted by the Parties unless the Parties mutually agree to and select a CSP Member to serve as the Chair of this special CSP Panel.

## **CSP RULE 17. CSP MEMBER JOBSITE VISITATIONS**

A CSP Member may be required to make a jobsite visitation especially if they will be rendering a final and binding decision in a binding mediation or may be rendering an Arbitration Award that will be final and binding upon the Parties. The CSP Administrator and/or the DRB Chair or CSP Chair, as appropriate, shall make all of the arrangements for the jobsite visitation. The CSP Member may visit the jobsite only if there is a representative for both of the Parties to the CSP in attendance. The DRB Chair may elect to attend the jobsite visit with the CSP Member if the Chair so decides. If proper notification of the jobsite visitation has been made to the Parties and one or both of the Parties do not have a representative at the jobsite when scheduled, the visitation may occur with the approval of the CSP Chair, CSP Administrator or DRB Chair as appropriate.

It shall be the responsibility of the General Contractor and/or the Owner, if appropriate; to make certain that the jobsite is both safe and accessible for the CSP Member(s) involved in the jobsite visitation. Protective clothing and proper weather gear shall be provided to the CSP Member(s) or if the CSP Member(s) should need to purchase such clothing, it shall be an allowable reimbursable expense for the Member(s).

Any CSP Member or the DRB Chair shall determine if the jobsite is safe for a jobsite visit and may postpone the jobsite visit if they feel the jobsite is not safe or accessible.

## **CSP RULE 18. TIME LIMIT FOR ADVISORY OPINIONS, RECOMMENDATIONS AND AWARDS**

If a Member(s) of the CSP is requested to issue an advisory opinion, the advisory opinion shall be issued by the CSP Member(s) within thirty days of the close of the hearing or discussion related to the issues involved. The advisory opinion may be issued in a shorter period of time only through the mutual agreement of the Parties and

the CSP Chair, DRB Chair, as appropriate, prior to the commencement of the advisory hearing.

After an arbitration hearing has concluded, the “Certified Copy” of the Arbitration Award shall be issued by the CSP Administrator within thirty days of the close of the arbitration hearing. If a jobsite visitation 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 visitation. 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 CSP Administrator within thirty days of the conclusion of the mediation procedure. If a mediator, conducting a binding mediation, determines that a jobsite visitation 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 visitation.

The issuance of an advisory opinion, Mediation Settlement Agreement or an Arbitration Award may be delayed according to conditions specified in CSP Rule 21.

## **CSP RULE 19. SUBSEQUENT LEGAL PROCEEDINGS**

All “Certified Copies” of Advisory Opinions, Mediation Settlement Agreements and Arbitration Awards shall not be admissible in any further or related legal proceedings unless the Parties have agreed to some other procedure.

As mediations are conducted under a veil of confidentiality, all notes of the mediator(s) are destroyed after the Mediation 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 CSP 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 CSP 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 CSP 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 CSP MEMBER, CDRS INDEPENDENT CONTRACTOR OR CDRS INCURRED TO RESIST THE SUBPOENA OR OTHER LEGAL DOCUMENT INCLUDING ATTORNEY'S FEES OR ANY OTHER EXPENSES RELATED TO THE DEFENSE OF THE CSP MEMBER OR OF CDRS AGAINST THE SUBPOENA OR OTHER LEGAL DOCUMENT.

## **CSP RULE 20. HOLD HARMLESS**

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

## **DRB RULE 21. FEES, COSTS AND BILLING PROCEDURES**

All fees and costs related to the functions of a CSP or its members shall be as stipulated in the various CSP Agreements and/or applicable Fees and Costs Schedules that are executed between the Parties and/or CSP Members or CDRS. The CDRS CSP Administrator shall review the monthly invoices submitted by the CSP Members and shall invoice the applicable Party(s) each month for their applicable share of the fees and related costs of the CSP Members. CDRS's continuing administrative charges shall be included in the hourly CSP Neutral Members fees unless other arrangements have been pre-arranged by the Parties and CDRS. 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 CSP. Special CSP meetings, jobsite visits, hearings or other special CSP 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 CSP 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 or CSP including the issuance of an Advisory Opinion, Recommendation, 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 CSP monthly or special invoice, the other party may make that payment on behalf of the delinquent Party in order to keep the CSP processes on schedule in the continuance of handling the required duties and responsibilities of the CSP Members. If the delinquent Party then makes payment to CDRS, CDRS will refund the payment the other Party made on behalf of the delinquent Party.

## **CSP RULE 22. DRB DURATION**

All CSP Agreements shall remain in effect until the completion of the construction project or until it is cancelled. The CSP may be cancelled and terminated at the mutual request of the Parties to the CSP. This request shall be submitted to the CSP Administrator in writing. If the CSP has ADR responsibilities, those ADR responsibilities may be extended as required and requested by the Parties.

The 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 cancellation, 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.

## **CSP RULE 23. UNSPECIFIED RULE OR PROCEDURE**

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

## **CSP RULE 24. AUTHORIZED USE OF RULES AND PROCEDURES AND FORMS**

As these CDRS CSP Rules and Procedures and CDRS CSP forms and documents are copyrighted by CDRS, any CSP or ADR procedures that are utilized and/or any ADR procedure or CSP that is conducted according to these Rules and Procedures or utilizes any CDRS CSP forms or documents that is not in conjunction with a case or CSP being administered by CDRS, individuals or entities must first obtain written permission from CDRS before utilizing these CSP Rules and Procedures or CSP 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.

## **CSP RULE 25. SEVERABILITY**

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