



**CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC**  
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**PRE-HEARING AGREEMENT  
AS TO:  
ARBITRATOR(S) POWERS, ARBITRATION RULES  
AND PROCEDURES**

Claimant(s) \_\_\_\_\_  
Respondent(s) \_\_\_\_\_  
Arbitrator(s) \_\_\_\_\_

**ARBITRATOR'S POWERS**

The arbitrator(s) shall have full power to make such orders, issue subpoenas, and to establish such rules and regulations as he or she (they) shall deem just and expedient in respect to any procedure or matter involved in this arbitration.

The arbitrator(s) shall have the authority to select the venue for the arbitration hearing and for any other pre-hearing meetings as he or she (they) deem necessary. The arbitrator(s) also have the authority to set the dates and times for the arbitration hearing. The Arbitrator(s) shall make every effort to make the venue and the times and dates of the hearings as convenient as possible for both of the parties.

If there is one arbitrator, his or her decision shall be final; if there are three arbitrators, the decision of any two shall be final unless two of the arbitrators are advocacy or selected arbitrators where the decision of the arbitrator chair shall be final unless there is a pre-existing written agreement that stipulates another procedure for the rendering of the final award. In rendering the award, the arbitrator(s) shall determine the rights and obligations of the parties according to the substantive and procedural laws of this state, including the laws governing arbitration proceedings. The award of the arbitrator(s) shall be final and binding upon the parties without appeal or review except as permitted by the state's arbitration act or statute, the Uniform Arbitration Act or the United States Arbitration Act whichever or all that are in effect.

The arbitrator(s) shall have the authority and power to request the production of any books, records, construction plans or required documents in the possession or control of either of the parties, and to order that either party shall have access to and be permitted to inspect and make copies thereof.

The arbitrator(s) shall have the power to order and direct what he or she (they) shall deem necessary to be done by either of the parties relating to the matters in dispute.

The arbitrator(s) shall have the authority and power to proceed ex parte in the event that either party fails, after reasonable notice, to attend hearings before him or her (them).

The Arbitrator(s) may grant any remedy or relief that the arbitrator(s) deems just and equitable and within the scope of the agreement of the parties, including but not limited to interim awards, provisional remedies, temporary injunctive relief, declaratory relief, damages and injunctive relief.

The arbitrator(s) may, in his or her (their) discretion if he or she (they) deem it just and equitable, award any form of equitable or legal relief that a party could recover in a court action, including but not limited to an injunction, punitive awards, orders for specific performance and declaratory relief or damages.

The arbitrator(s) shall, as part of the final award, relegate attorney's fees and related expenses, including but not limited to arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying, telephone, witness costs and other related expenses unless the parties have a pre-existing written agreement as to the allocation of costs for this arbitration.

The arbitrator(s) if they deem it to be of assistance, may, at the parties' expense, retain the services of expert or professional witnesses such as an accountant, attorney, builder, remodeler, architect, building inspector, home inspector, material supplier or other expert or professional witnesses.

The arbitrator(s) have the authority, at the conclusion of the hearing and prior to the rendering of the final award, to allow the parties to settle this arbitration through mediation and/or through private discussions if the parties and the arbitrator(s) mutually consent to try this alternate dispute resolution procedure.

### **ARBITRATOR'S DEFAULT AUTHORITY**

The arbitrator(s) may proceed in the absence of any party or representative who, after due and proper notice, fails to appear or obtain a continuance. However, an award shall not be made solely on the default of a party, and the evidence presented by the appearing party must support any resulting award.

The arbitrator(s) is empowered to issue any award supported by the evidence presented by the appearing party should either party refuse or fail to participate in the arbitration, notwithstanding notice in accordance with the applicable laws or rules.

### **DISCOVERY**

Except where required below, discovery shall be at the discretion of the arbitrator(s) in accordance with the following guidelines:

- (a) The arbitrator(s) shall have the discretion to order pre-hearing exchanges of information, including but not limited to the production of all documents and exchanges of summaries of testimony of the proposed witnesses.
- (b) The deposition of the claimant(s) and respondent(s) shall be allowed as a matter of right.
- (c) One set of interrogatories approved by the arbitrator(s) shall be allowed.

- (d) There shall be an early and prompt designation and exchange of the names and addresses of general or expert witnesses who may be called upon to testify at the arbitration hearing. Their depositions and all other discovery shall be allowed by the arbitrator only upon a showing of good cause.

**ADMISSIBILITY OF EVIDENCE**

*RULES OF EVIDENCE AND PROCEDURE:* The order of proof, conduct of the hearing, and presentation and admissibility of evidence shall be determined in the arbitrator's sole discretion, notwithstanding any statutes or rules to the contrary.

Any non-privileged evidence, including hearsay shall be admitted by the arbitrator if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law, provided that the arbitrator may exclude evidence deemed to be cumulative.

Strict conformity to the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privileges and work product. The arbitrator shall consider evidence that he or she (they) finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The arbitrator may be guided in that determination by the principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all parties are afforded the opportunity to present material and relevant evidence.

**ACCEPTANCE OF THE PARTIES**

By signing below, the parties and their attorneys agree to abide by and follow the rules and procedures mentioned above and acknowledge the authority of the arbitrator(s).

Claimant \_\_\_\_\_ Date \_\_\_\_\_

Claimant \_\_\_\_\_ Date \_\_\_\_\_

Claimant's Attorney \_\_\_\_\_ Date \_\_\_\_\_

Respondent \_\_\_\_\_ Date \_\_\_\_\_

Respondent \_\_\_\_\_ Date \_\_\_\_\_

Respondent's Attorney \_\_\_\_\_ Date \_\_\_\_\_