

**International Institute for
Conflict Prevention & Resolution**

CPR PROCEDURES & CLAUSES
Rules for Expedited
Arbitration of
**Construction
Disputes**

Effective June 30, 2006

ANOTHER CPR INSTITUTE
INITIATIVE THAT HELPS CONTAIN
THE COST OF CONFLICT



CPR

International Institute for
Conflict Prevention & Resolution

For a complete list of CPR's services
for the construction industry, please
go to www.cpradr.org

ABOUT CPR

The International Institute for Conflict Prevention & Resolution (formerly the CPR Institute for Dispute Resolution) is a membership-based nonprofit organization that promotes excellence and innovation in public and private dispute resolution, serving as a primary multinational resource for avoidance, management, and resolution of business-related disputes.

CPR Members – General counsel and senior lawyers of Fortune 500 organizations as well as partners in the top law firms around the world. It is a committed and active membership, diligently participating in CPR activities and serving on committees.

The CPR 1,000 – 1,000 of the highest quality arbitrators and mediators, with specialization in over 17 practice areas and industries. As part of CPR's nomination process, we check not only the suitability, but the availability of all neutrals nominated, as well as disclose any conflicts of interest up front.

CPR Pledge Signers – More than 4,000 operating companies have committed to the Corporate Policy Statement on Alternatives to Litigation®. Moreover, better than 1,500 law firms have signed the CPR Law Firm Policy Statement on Alternatives to Litigation®, including 400 of the nation's 500 largest firms. This Pledge has been invaluable in bringing disputing parties to the negotiating table.

CPR's Commitment – As we celebrate over 25 years of achievement, we continue to dedicate the organization to providing effective, innovative ways of preventing and resolving disputes affecting business enterprises. We do so through leadership and advocacy, and by providing comprehensive resources such as information, training, consultation, neutrals, and networking for business, the judiciary, government, and other institutions.

RULES FOR EXPEDITED ARBITRATION OF CONSTRUCTION DISPUTES

Introduction

Domestically, the use of arbitration in construction disputes continues unabated as does dissatisfaction with its prolonged time frames and expense.

The United Kingdom's speedier construction adjudication process propelled CPR to challenge the existing American structure and develop an expedited arbitration procedure for construction disputes centered on a 100-day hearing time frame.

The process retains the hallmarks historically associated with arbitration: a fair, expeditious, private and less expensive process than litigation. It also contains familiar protections to avoid erosion of parties' rights that could occur with a less carefully-drafted procedure. Nonetheless, it allows tight arbitrator control and fosters compressed time frames to bring about sought-after speed and reduced expense. While party modification of the Rules is permitted, the intent is to retain an expeditious process.

Highlights of the Rules

Compressed Time Frames: Throughout the Rules, time frames are abbreviated for expedition.

100-Day Hearing Window: After conclusion of a pre-hearing conference, the arbitrators set the date to commence the arbitration hearing process to be completed within 100 days which includes 60 days for discovery, 30 days for hearing, and 10 days for award issuance.

Presumptive Use of Three Arbitrators: Parties each select an arbitrator and they select the third. Parties can affirmatively opt, in the pre-dispute clause, to use one or three arbitrators, all appointed by CPR, to expedite selection.

Appointment of Arbitrators by CPR: If any party fails to comply with its appointment obligations, CPR shall appoint arbitrators under tight time frames.

Detailed Pleadings Required: The Statement of Claim and Defense must include facts, law, documents, as well as names of experts and percipient witnesses.

Avoiding Ambush: Respondents can avoid ambush by filing a motion to extend time to respond, in lieu of a Notice of Defense, if good cause exists. The motion can delay the commencement of the 100-day period, but will not expand it.

Limited Discovery: The tribunal will require exchange of documents and may exclude that which was not, and should have been, exchanged; it can permit expeditious and limited discovery, within a standard of “needs of the parties and expeditious, cost-effective discovery,” which may include a few days of depositions or one day for expert depositions; and the Tribunal will impose strict limits on e-discovery.

Time Frame Control: The tribunal may direct the manner of use of time at the hearing.

Subpoena Enforcement: Any member of the Tribunal can conduct a hearing in any location to enforce a subpoena.

Neutral Expert Appointment Possibility: The arbitrators can consider appointment of neutral experts to expedite the process.

Mediation Possibilities: Parties can agree to interrupt the proceedings to pursue mediation at any time and may have a separate mediator sit in on the arbitration proceedings in order to conduct simultaneous mediation.

CPR Arbitration Appeal Procedure: The pre-dispute clauses include the option of agreeing to use CPR’s private Arbitration Appeal Procedure that employs three former federal judges; the clause sets out the requirements for easy reference.

Expanded Panel of CPR Construction Neutrals: The Rules are complemented by an expanded CPR Panel of Construction Arbitrators including non-lawyers who have committed to apply the time periods of these Rules. This addresses one of the main causes of delay: congested arbitrator calendars.

Other Standard CPR Protections

The Rules include standard CPR provisions for arbitration. The Tribunal:

- will hold a pre-hearing conference at which procedures are determined;
- will apply the attorney-client and work-product privileges;
- will protect proprietary information, trade secrets, and sensitive data;
- will issue reasoned awards and may issue dissenting views; and
- all arbitrators must be neutral, however appointed.

The Rules also comply with CPR Principles for Non-Administered Arbitration.

Rules for Expedited Arbitration of Construction Disputes

ADVISORY COMMITTEE	4
CPR CLAUSES	5
A. GENERAL AND INTRODUCTORY RULES	7
Rule 1: Scope of Application to Construction Disputes	
Rule 2: Permissible Forms of Notice and Time Period Calculations	
Rule 3: Commencement of Arbitration	
Rule 4: Representation	
B. RULES WITH RESPECT TO THE TRIBUNAL	11
Rule 5: Selection of Arbitrator(s) by the Parties	
Rule 6: Selection of Arbitrator(s) by the CPR Institute	
Rule 7: Qualifications, Challenges and Replacement of Arbitrator(s)	
Rule 8: Challenges to the Jurisdiction of the Tribunal	
C. RULES WITH RESPECT TO THE PRE-HEARING CONFERENCE AND CONDUCT OF THE ARBITRAL PROCEEDINGS	15
Rule 9: General Provisions	
Rule 10: Applicable Law(s) and Remedies	
Rule 11: Discovery	
Rule 12: Evidence and Hearings	
Rule 13: Interim Measures of Protection	
Rule 14: The Award	
D. MISCELLANEOUS RULES	21
Rule 15: Failure to Comply with Rules	
Rule 16: Costs	
Rule 17: Confidentiality	
Rule 18: Settlement and Mediation	
Rule 19: Actions against the CPR Institute or Arbitrator(s)	
Rule 20: Waiver	
Rule 21: Interpretation of Rules	
CPR PRINCIPLES	Back Cover

**DRAFTING SUB-COMMITTEE
OF CPR CONSTRUCTION
ADVISORY COMMITTEE**

JESSE B. GROVE, III
Thelen, Reid & Priest LLP
Chair: Drafting Sub-Committee

ROSS J. ALTMAN
DLA Piper Rudnick Gray
Cary US LLP

ALBERT BATES, JR., IV
Reed Smith LLP

MICHAEL BLACK, Q.C.
London

PHILIP L. BRUNER
Faegre & Benson LLP

STEPHEN D. BUTLER
Bechtel Corporation
*Vice Chair CPR Construction
Advisory Committee*

CATHY CRONIN-HARRIS
CPR Senior Consultant
CPR Staff Director

A.H. GAEDE, JR.
Bradley Arant Rose &
White LLP

JAMES P. GROTON
Sutherland, Asbill &
Brennan LLP

WALTER L. HANNAH
Nexsen Pruet Adams
Kleemeier, LLC

LARRY D. HARRIS
DLA Piper Rudnick Gray
Cary US LLP

JOHN W. HINCHEY
King & Spalding

TY D. LAURIE
DLA Piper Rudnick Gray
Cary US LLP

ROBERT L. MEYERS, III
Jones Day

PATRICK J. O'CONNOR, JR.
Faegre & Benson LLP

ROBERT S. PECKAR
Peckar & Abramson

RICHARD L. REED
Coats Rose

FRANK E. RIGGS, JR.
Troutman Sanders LLP

ROBERT A. RUBIN
Seyfarth Shaw LLP

GEORGE ANTHONY SMITH
Kilpatrick Stockton LLP
*Chair CPR Construction
Advisory Committee*

ROBERT J. SMITH
Wickwire Gavin, P.C.

THOMAS J. STIPANOWICH
Pepperdine University
School of Law

DEAN THOMSON
Fabyanske, Westra, Hart
& Thomson P.A.

CPR CLAUSES

Standard Contractual Provisions

The International Institute for Conflict Prevention & Resolution (“the CPR Institute”) Rules for Expedited Arbitration of Construction Disputes are intended in particular for use in construction disputes and are designed to assure expeditious and economical conduct of proceedings and prompt resolution of disputes. The Rules may be adopted by using the following standard provisions recommended by the CPR Institute with such modifications as the Parties may agree. The Rules contemplate that the arbitral proceedings shall be complete within 100 days of the Pre-hearing Conference.

A. Pre-Dispute Clause: Standard

“Any dispute arising out of or relating to this contract, including the making, breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Expedited Arbitration of Construction Disputes (the “Rules”), in the form in effect on the date of this agreement, by three neutral arbitrators, of whom each party shall appoint one with the third to be selected by agreement or appointment by the CPR Institute (unless the parties select one of the following options by affirmatively placing an “x” in the appropriate box below:

- one neutral arbitrator to be appointed by the CPR Institute; or
- three neutral arbitrators to be appointed by the CPR Institute).

The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be _____(insert city, state, if desired).”

B. The CPR Institute Arbitration Appeal Procedure

(Strike if not desired)

“Unless otherwise agreed by the parties, within 30 days of receipt by the parties of a final arbitration award in any arbitration arising out of or related to this agreement, an appeal may be taken from such final award under the CPR Institute Arbitration Appeal Procedure, currently in effect. Pursuant to such Procedure, the appeal shall be heard by three former federal judges who will apply the following grounds for appeal:

- i) the award contains material and prejudicial errors of law of such nature that it does not rest on any appropriate legal basis;
- ii) the award contains factual findings clearly unsupported by the record; or
- iii) the award is subject to any of the enumerated grounds contained in Section 10 of the Federal Arbitration Act for vacating awards.

No appeal may be filed unless the arbitrators in the original arbitration were required by the parties to reach a decision in compliance with applicable law and issue a written award setting forth the factual and legal bases; and a record was made of all hearings and evidence in such original arbitration proceeding.

Unless otherwise agreed to by the parties and the appeal Tribunal, the appeal shall be conducted at the place of the original arbitration.”

C. Existing Dispute Submission Agreement: Standard

“We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Expedited Arbitration of Construction Disputes (the “Rules”), in effect on the date of this agreement, the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to three neutral arbitrators, of whom each party shall appoint one with the third to be selected by agreement or appointment by the CPR Institute (unless the parties select one of the following options by affirmatively placing an “x” in the appropriate box below:

- one neutral arbitrator to be appointed by the CPR Institute; or
- three neutral arbitrators to be appointed by the CPR Institute).

We further agree that we shall faithfully observe this agreement and the Rules and that we shall abide by and perform any award rendered by the arbitrator(s). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award may be entered by any court having jurisdiction thereof. The place of arbitration shall be _____(insert city, state, if desired).”

See Clause B, above, if parties wish to agree to use the CPR Institute Arbitration Appeal Procedure, as well, in their submission agreement.

A. GENERAL AND INTRODUCTORY RULES

Rule 1: Scope of Application to Construction Disputes

- 1.1** Where the parties to a contract or a dispute submission agreement have provided for arbitration under these Rules, they shall be deemed to have made these Rules, as they may have been modified by agreement of the parties, a part of their arbitration agreement. Unless the parties otherwise agree, these Rules, and any amendment thereof adopted by the CPR Institute, shall apply in the form in effect at the time the arbitration agreement is made.
- 1.2** These Rules shall govern the arbitration except that where any of these Rules is in conflict with a mandatory provision of applicable arbitration law, that provision of law shall prevail.
- 1.3** The intent of the Rules is to avoid delay in constitution of the Tribunal and then provide for avoidance of unfairness to responding parties that might arise from strict enforcement of time limits on responses by allowing the Tribunal discretion to establish at the Pre-hearing Conference the date of the beginning of the 100-day arbitral process contemplated by the Rules. Once that date has been established, the Rules are intended to require that the disputes being arbitrated be brought to hearing within 60 days. Thereafter, the intent is that the hearing be concluded within 30 days and an award rendered not later than 10 days from the close of hearing. The parties may agree to alter these durations, and the Tribunal may, but will not ordinarily, do so on its own motion or at the request of less than all the parties. Parties adopting these Rules should ensure in advance that their representatives are capable of and committed to compliance with the Rules.

For guidance to the parties and the Tribunal, and subject to the extension of time provisions herein, application of these Rules will normally result in the following timeline for the arbitral process, when the parties have decided to use three neutral arbitrators of whom each shall appoint one with the third to be selected by agreement or appointment by the CPR Institute.

CALCULATED BY BUSINESS DAYS

- Day 1:** Notice of Arbitration, Statement of Claim and Nomination of Arbitrator by Claimant
- Day 10:** Nomination of Arbitrator by Respondent
- Day 15:** Third Arbitrator Agreed and Named
- Day 20:** Statement of Defense and any Counterclaim or Respondent's Motion to Expand Time (under Rule 3.6) and Arbitrator Appointment by CPR if Necessary
- Day 25:** Pre-hearing Conference of Parties with Tribunal, Determination of Time to Commence the 100-Day Period and Interim Deadlines Established.

CALCULATED BY CALENDAR DAYS EXCEPT WHERE NOTED

From the Date of Commencement of the 100-Day Period:

- 60 Days:** All Discovery Complete and All Pre-hearing Submissions Filed
- 90 Days:** Hearing Complete
- 100 Days:** Award Rendered (Business Days Apply to Award Time Frame)

Rule 2: Permissible Forms of Notice and Time Period Calculations

2.1 Notices or other communications required under these Rules shall be in writing and delivered to the address specified in writing by the recipient or, if no address has been specified, to the last known business or residence address of the recipient. Notices and communications may be given by registered mail, e-mail, courier, telex, facsimile transmission, or any other means of communication that provides a record thereof. Unless the original transmission of notices or communications was made by e-mail, copies of notices and communications shall be sent on the day of transmission by e-mail to all recipients. Notices and communications shall be deemed to be effective as of the earlier of physical or electronic receipt. Proof of transmission shall be deemed prima facie proof of receipt of any notice or communication given under these Rules.

- 2.2** Time periods specified by these Rules or established by the Arbitral Tribunal (the “Tribunal”) shall start to run on the day following the day when a notice or communication is received, unless the Tribunal shall specifically provide otherwise. If the last day of such period is an official holiday or a non-business day at the place where the notice or communication is received, the period is extended until the first business day which follows. Unless otherwise noted, all time periods of 10 days or less shall be calculated in business days. All other time periods shall be calculated using consecutive calendar days.

Rule 3: Commencement of Arbitration

- 3.1** The party commencing arbitration (the “Claimant”) shall transmit to the other party (the “Respondent”) a Notice of Arbitration and a Statement of Claim.
- 3.2** The arbitration shall be deemed commenced as to any Respondent on the date on which the Notice of Arbitration is received by the Respondent.
- 3.3** Notice of Arbitration shall include in the text or in attachments thereto:
- a. The full names, descriptions and addresses of the parties and the names, address, phone and fax of counsel, including e-mail addresses for parties and counsel;
 - b. A demand that the dispute be referred to arbitration pursuant to these Rules;
 - c. The text of the arbitration clause or the arbitration submission agreement that is involved;
 - d. The name, address and *curriculum vitae* of the arbitrator to be appointed by the Claimant, if any;
 - e. Any disclosure required under Rule 7.4.
- 3.4** Statement of Claim shall include:
- a. A detailed statement of the Claimant’s claim including all facts to be proved;
 - b. The legal authorities relied upon by Claimant;
 - c. Copies of all documents that the Claimant intends to rely upon in the arbitration;
 - d. The names of the expert witnesses Claimant intends to present together with *curricula vitae* and a summary of the opinion testimony to be offered;
 - e. The names of the percipient witnesses Claimant intends to present together with a summary of the proposed testimony of each.

- 3.5** Unless the parties have agreed that the CPR Institute shall appoint the arbitrator(s), within 10 days after receipt of the Notice of Arbitration, the Respondent shall deliver to the Claimant the name, address and *curriculum vitae* of the arbitrator appointed by the Respondent together with any disclosure required under Rule 7.4. Failure to nominate an arbitrator within the 10-day period shall result in the appointment of Respondent's arbitrator by the CPR Institute within 5 days of expiration of the 10-day nomination period.
- 3.6** Within 20 days after receipt of the Notice of Arbitration, the Respondent shall deliver to the Claimant a Statement of Defense responsive in form and substance to all elements of the Statement of Claim. Where Respondent has good cause for its inability to abide by the 20-day period for delivery of its Statement of Defense, Respondent may substitute a motion, filed within the same 20-day period, to establish a later deadline and the Tribunal shall set the time for delivering the Statement of Defense at the Pre-hearing Conference. Failure to deliver either a Statement of Defense or a motion to establish a later deadline shall not delay the arbitration; in the event of such failure, all claims set forth in the Statement of Claim shall be deemed denied.
- 3.7** The Respondent may include in its Statement of Defense any Statement of Counterclaim within the scope of the arbitration agreement. If it does so, the Statement of Counterclaim shall be in form and substance identical to the elements of the Statement of Claim.
- 3.7.1** If a Counterclaim is asserted, the Claimant shall have until the time established by the Tribunal at the Pre-hearing Conference to deliver to the Respondent a Reply to Counterclaim responsive in form and substance to all elements of the Statement of Counterclaim. Failure to deliver a Reply to Counterclaim shall not delay the arbitration; in the event of such failure, all Counterclaims shall be deemed denied.
- 3.8** Claims or Counterclaims within the scope of the arbitration agreement may be freely added or amended prior to the establishment of the Tribunal, and thereafter with the consent of the Tribunal. Amended Statements of Defense or Replies to Amended Claims or Amended Counterclaims shall be delivered within 10 days after the addition or amendment or at the direction of the Tribunal.

Rule 4: Representation

- 4.1** The parties may be represented or assisted by persons of their choice.
- 4.2** Each party shall communicate the name, address and function of its representatives in writing to the other party in the Statement of Claim and Statement of Defense and to the Tribunal promptly.

B. RULES WITH RESPECT TO THE TRIBUNAL

Rule 5: Selection of Arbitrator(s) by the Parties

- 5.1** Unless otherwise agreed, the Tribunal shall consist of three neutral arbitrators, one appointed by each of the parties and a third arbitrator. Within 5 days after the appointment of the second arbitrator, the two party-appointed arbitrators shall appoint the third arbitrator, who shall chair the Tribunal. If the party-appointed arbitrators are unable to agree on the third arbitrator within the 5-day period, the third arbitrator shall be selected as provided in Rule 6.
- 5.2** Where the arbitration agreement entitles each party to appoint an arbitrator but there is more than one Claimant or Respondent, and either the multiple Claimants or the multiple Respondents do not jointly appoint an arbitrator by the time specified in these Rules, the CPR Institute shall appoint the arbitrator(s) as provided in Rule 6.

Rule 6: Selection of Arbitrator(s) by the CPR Institute

- 6.1** Whenever (i) a party has failed to appoint the arbitrator to be appointed by it; (ii) the parties have failed to appoint the arbitrator(s) to be appointed by them acting jointly; (iii) the party-appointed arbitrators have failed to appoint the third arbitrator; (iv) the parties have provided that one or more arbitrators shall be appointed by the CPR Institute; or (v) the multi-party nature of the dispute calls for the CPR Institute to appoint an arbitrator, the arbitrator(s) required to complete the Tribunal shall be selected as provided in this Rule 6, and either party may request the CPR Institute in writing, with copy to the other party, to proceed pursuant to this Rule 6.
- 6.2** The written request shall be made as follows:
 - a. If a party has failed to appoint the arbitrator to be appointed by it, or the parties have failed to appoint the arbitrator(s) to be appointed by them, within 3 days after such failure has occurred.

- b. If the party-appointed arbitrators have failed to appoint the third arbitrator, within 3 days after the appointment of the third arbitrator should have been made.
 - c. If the arbitrator(s) are to be appointed by the CPR Institute by agreement, within 5 days after the Notice of Arbitration is received by Respondent.
- 6.3** The written request shall include a copy of the Notice of Arbitration and Statement of Claim and the Statement of Defense.
- 6.4** Upon receipt of such notice, the CPR Institute shall promptly appoint a person or persons whom it deems qualified to fill any remaining vacancy.
- 6.5** Any arbitrator appointed by the CPR Institute shall be a member of the CPR Institute's Construction Panel of Distinguished Neutrals.

Rule 7: Qualifications, Challenges and Replacement of Arbitrator(s)

- 7.1** Each arbitrator shall be independent and impartial.
- 7.2** Any arbitrator appointed by the parties or by the CPR Institute shall accept appointment by expressly representing to the CPR Institute within 2 days of appointment that he or she has the time available to devote to the expeditious process and time periods for Pre-hearing Conference, discovery, hearing and award contemplated by these Rules and to facilitate the expedition contemplated in these Rules.
- 7.3** By accepting appointment, each arbitrator shall be deemed to be bound by these Rules and any modification agreed to by the parties.
- 7.4** Each arbitrator shall disclose in writing to the parties at the time of appointment, and promptly thereafter during the course of the arbitration, any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality. Such circumstances include bias, interest in the result of the arbitration, and past or present relations with a party, counsel or any witness.
- 7.5** No party or anyone acting on its behalf shall have any *ex parte* communications concerning any matter relating to the proceeding with any arbitrator or arbitrator candidate, except that a party may advise a candidate for appointment as its party-appointed

arbitrator of the general nature of the case and discuss the candidate's qualifications, availability, and independence and impartiality with respect to the parties, and a party may confer with its party-appointed arbitrator regarding the selection of the chair of the Tribunal.

- 7.6** Any arbitrator may be challenged if circumstances exist or arise that give rise to justifiable doubt regarding that arbitrator's independence or impartiality, provided that a party may challenge an arbitrator whom it has appointed only for reasons of which it becomes aware after the appointment has been made.
- 7.7** A party may challenge an arbitrator only by a notice in writing to the CPR Institute, with copy to the Tribunal and the other party, given no later than 2 days after the challenging party (i) receives notification of the appointment of that arbitrator, or (ii) becomes aware of the circumstances specified in Rule 7.6, whichever shall last occur. The notice shall state the reasons for the challenge with specificity.
- 7.8** When an arbitrator has been challenged by a party, the other party may agree to the challenge or the arbitrator may voluntarily withdraw. Neither of these actions implies acceptance of the validity of the challenge.
- 7.9** If neither agreed disqualification nor voluntary withdrawal occurs, the challenge shall be decided by the CPR Institute, pursuant to the CPR Challenge Procedure, after providing the non-challenging party and each member of the Tribunal with an opportunity to comment on the challenge during a 5-day period. All deadlines established by these Rules or the Tribunal shall be extended on a day-for-day basis until the challenge has been decided.
- 7.10** In the event of death, resignation or successful challenge of an arbitrator not appointed by a party, a substitute arbitrator shall be selected pursuant to the procedure by which the arbitrator being replaced was selected. In the event of the death, resignation or successful challenge of an arbitrator appointed by a party, that party may appoint a substitute arbitrator; provided, however, that should that party fail to notify the Tribunal and the other party of the substitute appointment within 5 days

from the date on which it becomes aware that the opening arose, that party's right of appointment shall lapse and the Tribunal shall promptly request the CPR Institute to appoint a substitute arbitrator forthwith.

- 7.11** In the event that an arbitrator fails to act or is de jure or de facto prevented from duly performing the functions of an arbitrator, the procedures provided in Rule 7.10 shall apply to the selection of a replacement. If the parties do not agree on whether the arbitrator has failed to act or is prevented from performing the functions of an arbitrator, either party may request the CPR Institute to make that determination forthwith.
- 7.12** If the chair of the Tribunal is replaced, the successor shall decide the extent to which any hearings held previously shall be repeated. If any other arbitrator is replaced, the Tribunal in its discretion may require that some or all prior hearings be repeated.

Rule 8: Challenges to the Jurisdiction of the Tribunal

- 8.1** The Tribunal shall have the power to hear and determine challenges to its jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
- 8.2** The Tribunal shall have the power to determine the existence, validity or scope of the contract from which the dispute arises. For the purposes of challenges to the jurisdiction of the Tribunal, the arbitration clause shall be considered as separable from any contract of which it forms a part. Invalid or illegal provisions of the arbitration clause may be severed from the arbitration provision if such severance will permit the arbitration to proceed without the offending provisions.
- 8.3** Any challenges to the jurisdiction of the Tribunal, except challenges based on the award itself, shall be made not later than the Statement of Defense or, with respect to a Counterclaim, the Reply to the Counterclaim; provided, however, that if a Claim or Counterclaim is later added or amended such a challenge may be made not later than the response to such added or amended Claim or Counterclaim.

C. RULES WITH RESPECT TO THE PRE-HEARING CONFERENCE AND CONDUCT OF THE ARBITRAL PROCEEDINGS

Rule 9: General Provisions

- 9.1** Subject to these Rules, the Tribunal may conduct the arbitration in such manner as it shall deem appropriate to assure fundamental fairness. The chair shall be responsible for the organization of arbitral conferences and hearings and arrangements with respect to the functioning of the Tribunal.
- 9.2** The proceedings shall be conducted in an expeditious manner. In setting time limits, the Tribunal should bear in mind its obligation to manage the proceeding firmly in order to complete proceedings as economically and expeditiously as possible and to attempt to enforce the time frames for the Pre-hearing Conference, for discovery, and for the arbitration hearing and award. The Tribunal is empowered to impose other time limits it considers reasonable on each phase of the proceeding.
- 9.3** The Tribunal shall hold an Initial Pre-hearing Conference for the planning and scheduling of the proceeding within 5 days after the Tribunal has been appointed. In the discretion of the Tribunal, Pre-hearing Conferences may be conducted via telephonic conference. Representatives of all the parties shall attend Pre-hearing Conferences, and it is desirable that a decision maker for each of the parties themselves attend. The objective of the Initial Pre-hearing Conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct and maintaining the time limits within these Rules. The Tribunal shall designate the date for commencement of the 100-day period. Matters to be considered in the Initial Pre-hearing Conference will ordinarily include, inter alia, the following:
- a. Determination of the time limits allocated to each party for the presentation of its case, cross examination and rebuttal at the arbitral hearing, including the time frame to conduct cross examination regarding any testimony presented in written form. Each party will appoint a person to monitor time used during the arbitral hearing and the appointed persons shall agree to time used after each session and report same to the Tribunal.

- b. Determination of permissible time frames, means and manner of discovery pursuant to Rule 11.
- c. Determination of the time frame for filing of motions and responses thereto, for requests for subpoenas, for requests for interim relief and for submission and response times for memoranda in support thereof.
- d. The utility of bifurcation or other separation of issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding.
- e. The need for and type of record of conferences and hearings, including the need for transcripts when the parties' agreement includes reference to the CPR Institute's Arbitration Appeal Procedure; the mode, manner and order for presenting proof; how expert testimony should be presented; and the necessity for any on-site inspection by the Tribunal.
- f. Means for early identification and narrowing of the issues in the arbitration.
- g. The possibility of stipulations of fact and admissions by the parties, as well as simplification of document authentication.
- h. The possibility of appointment of a neutral expert by the Tribunal.
- i. The possibility of the parties engaging in settlement negotiations, with or without the assistance of a mediator, who may not be a member of the Tribunal.

After the initial Pre-hearing Conference, further pre-hearing or other conferences may be held as the Tribunal deems appropriate while being mindful of the expedition sought by these Rules.

- 9.4** In order to define the issues to be heard and determined, the Tribunal may, inter alia, make pre-hearing orders and instruct the parties to file more detailed statements of claim and of defense and pre-hearing memoranda.
- 9.5** Unless the parties have agreed upon the place of arbitration, the Tribunal shall fix the place of arbitration based upon the contentions of the parties and the circumstances of the arbitration. The award shall be deemed made at such place. The Tribunal may schedule meetings and hold hearings wherever it deems appropriate. For purposes of enforcement

of subpoenas to give evidence, any member of the Tribunal may conduct a hearing at any necessary location.

Rule 10: Applicable Law(s) and Remedies

- 10.1** The Tribunal shall apply the substantive law(s) or rules designated by the parties to be applicable to the dispute. Failing such a designation by the parties, the Tribunal shall apply such law(s) or rules of law as it determines to be appropriate having in mind the venue of the underlying events and the hearing.
- 10.2** Subject to Rule 10.1, in arbitrations involving the application of contracts, the Tribunal shall decide in accordance with the terms of the contract.
- 10.3** The Tribunal may grant any remedy or relief, including but not limited to specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute.
- 10.4** The Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law.

Rule 11: Discovery

- 11.1** At the request of any party, the Tribunal shall order the exchange of relevant and material documents not included with the Statement of Claim, Statement of Defense, Counterclaim or Reply.
- 11.2** The Tribunal may require and facilitate such other discovery as it determines is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost-effective. However, the Tribunal will not ordinarily permit more than a few days of deposition discovery, including one-day depositions of experts, and any depositions permitted shall be brief. Electronic discovery will not ordinarily be permitted except, in the discretion of the Tribunal, to the extent of narrow, focused requests that are justified in terms of importance and materiality and possible to conduct within the time frames established by these Rules.
- 11.3** All discovery should be completed within the 60 days after the Tribunal orders commencement of the 100-day period.

- 11.4** The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information.
- 11.5** The Tribunal may exclude the introduction of any documents at the arbitration hearing that should have been but were not exchanged by the parties within the time frames established by these Rules.

Rule 12: Evidence and Hearings

- 12.1** The Tribunal shall determine the manner in which the parties shall present their cases taking due account of the time frame for the arbitration hearing and award. Unless otherwise determined by the Tribunal or agreed by the parties, the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements:
 - a. A statement of facts;
 - b. A statement of each claim being asserted;
 - c. A statement of the applicable law and authorities upon which the party relies;
 - d. A statement of the relief requested, including the basis for any damages claimed; and
 - e. A statement of the nature and manner of presentation of the evidence, including the name, capacity and subject of testimony of any witnesses to be called and an estimate of the amount of time required for each witness's direct testimony.
- 12.2** If either party so requests or the Tribunal so directs, a hearing shall be held for the presentation of evidence and oral argument. Testimony may be presented in written and/or oral form as the Tribunal may determine is appropriate. The Tribunal is not required to apply the rules of evidence used in judicial proceedings, provided, however, that the Tribunal shall apply the lawyer-client privilege and the work product privilege. The Tribunal shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.
- 12.3** The Tribunal may require the parties to produce evidence in addition to that initially offered. It may also appoint neutral experts whose testimony shall be subject to cross-examination and rebuttal.

- 12.4** The Tribunal shall determine the manner in which witnesses are to be examined. If testimony is presented in written form, the Tribunal shall provide a right to cross examination regarding such testimony.
- 12.5** The Tribunal shall have the right to exclude witnesses from hearings during the testimony of other witnesses.
- 12.6** The Tribunal, in the interest of achieving the time limits in these Rules, may do any of the following at any time:
- a. order any submission or other material to be delivered in writing or electronically;
 - b. take the initiative in ascertaining the facts and the law;
 - c. direct the manner in which the time at the hearing is to be used;
 - d. limit or specify the number of witnesses and/or experts to be heard orally;
 - e. order questions to witnesses or experts to be put and answered in writing;
 - f. conduct the questioning of witnesses or experts itself;
 - g. require two or more witnesses and/or experts to give their evidence together;
 - h. require the attendance of the parties themselves at hearings or conferences.

Rule 13: Interim Measures of Protection

- 13.1** At the request of a party, which shall be made at the Pre-hearing Conference or thereafter upon discovery that significant assets are being dissipated by a party, the Tribunal may take such interim measures as it deems necessary, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Tribunal may require appropriate security as a condition of ordering such measures.
- 13.2** A request for interim measures by a party to a court will be deemed compatible with the agreement to arbitrate and not as a waiver of that agreement.

Rule 14: The Award

- 14.1** The Tribunal may make final, interim, interlocutory and partial awards. With respect to any interim, interlocutory or partial award, the Tribunal may

state in its award whether or not it views the award as final for purposes of any appellate or judicial proceedings in connection therewith.

- 14.2** All awards shall be in writing and shall state the reasoning on which the award rests. The award shall be deemed to be made at the seat of arbitration and shall contain the date on which the award was made. The award shall be made and signed by at least a majority of the arbitrators.
- 14.3** A member of the Tribunal who does not join in an award may issue a dissenting opinion. Such opinion shall not constitute part of the award.
- 14.4** Executed copies of awards and of any dissenting opinion shall be delivered by the Tribunal to the parties.
- 14.5** Within 10 days after receipt of the award, either party, with notice to the other party, may request the Tribunal to clarify the award; to correct any clerical, typographical or computation errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The Tribunal shall make any clarification, correction or additional award requested by either party that it deems justified within 10 days after receipt of such request. Within 15 days after delivery of the award to the parties or, if a party requests a clarification, correction or additional award, within 10 days after receipt of such request, the Tribunal may make such corrections and additional awards on its own initiative as it deems appropriate. All clarifications, corrections, and additional awards shall be in writing, and the provisions of this Rule 14 shall apply to them.
- 14.6** Unless a party has commenced an appeal under the CPR Arbitration Appeal Procedure or the parties have otherwise agreed in writing, the award shall be final and binding on the parties upon the expiration of the time periods provided in Rules 14.5 and 14.8, and the parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a party, or a correction or additional award is made by the Tribunal on its own initiative as provided in Rule 14.5, the award shall be final and binding on the parties when (i) such clarification, correction or additional award is made by the Tribunal or upon

the expiration of the time periods provided in Rule 14.5 for such clarification, correction or additional award to be made, whichever is earlier, or (ii) the expiration of the time period provided in Rule 14.8, whichever is later.

- 14.7** Subject to the discretion of the Tribunal, the arbitral hearing shall be commenced promptly after the completion of the discovery period, and the dispute shall be submitted to the Tribunal for decision within 30 days after the commencement of the arbitral hearing. The final award should be rendered within 10 days thereafter. The Tribunal shall sit whenever possible on consecutive business days during the 30-day hearing period.
- 14.8** The parties shall make simultaneous submissions on costs and, if applicable attorneys' fees, to the Tribunal within 10 days of the date that the award is published and the Tribunal shall make its award on costs within 10 days of receipt by the Tribunal of the submissions.

D. MISCELLANEOUS RULES

Rule 15: Failure to Comply with Rules

- 15.1** Whenever a party fails to comply with these Rules, or any order of the Tribunal pursuant to these Rules, in a manner deemed material by the Tribunal, the Tribunal may impose a remedy it deems just, including an award on default, imposition of monetary sanctions, or an order establishing a reasonable period of time for compliance. Prior to entering an award on default, the Tribunal shall require the non-defaulting party to produce evidence and legal argument in support of its contentions. The Tribunal may receive such evidence and argument without the defaulting party's presence or participation.

Rule 16: Costs

- 16.1** Each arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as an arbitrator and shall be reimbursed for any reasonable travel and other expenses. The compensation for each arbitrator should be fully disclosed to all Tribunal members and parties.

- 16.2** The Tribunal shall fix the costs of arbitration in its award. The costs of arbitration include:
- a. The fees and expenses of members of the Tribunal;
 - b. The costs of expert advice and other assistance engaged by the Tribunal;
 - c. The travel and other expenses of witnesses to such extent as the Tribunal may deem appropriate;
 - d. The costs for legal representation and assistance and experts incurred by a party to such extent as the Tribunal may deem appropriate or the parties have agreed;
 - e. The charges and expenses of the CPR Institute with respect to the arbitration;
 - f. The costs of a transcript;
 - g. The costs of meeting and hearing facilities, and
 - h. Other incidental expenses or fees attendant to the arbitration.
- 16.3** The Tribunal may apportion the costs of arbitration between or among the parties in such manner as it deems reasonable, taking into account the circumstances of the case, the conduct of the parties during the proceeding, including dilatory behavior, and the result of the arbitration.
- 16.4** The Tribunal may request each party to deposit an appropriate amount as an advance for the costs referred to in Rule 16.2, except those specified in subparagraph (d) and, during the course of the proceeding, it may request supplementary deposits from the parties. Any such funds shall be held and disbursed in such a manner as the Tribunal may deem appropriate.
- 16.5** If the requested deposits are not paid in full within 10 days after receipt of the request, the Tribunal shall so inform the parties in order that jointly or severally they may make the requested payment. If such payment is not made, the Tribunal may suspend or terminate the proceeding.
- 16.6** After the proceeding has been concluded, the Tribunal shall return any unexpended balance to the parties from deposits made, as may be appropriate.

Rule 17: Confidentiality

- 17.1** Unless the parties agree otherwise, the parties, the arbitrators and the CPR Institute shall treat the proceedings, any related discovery and the decisions

of the Tribunal as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Tribunal.

Rule 18: Settlement and Mediation

- 18.1** Either party may propose settlement negotiations to the other party at any time. The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.
- 18.2** With the consent of the parties, the Tribunal at any stage of the proceeding may arrange for mediation of the claims asserted in the arbitration by a mediator acceptable to the parties. The mediator shall be a person other than a member of the Tribunal. Unless the parties agree otherwise, any such mediation shall be conducted under the CPR Institute's Mediation Procedure.
- 18.3** If the parties agree to settlement negotiations or mediation during the course of the proceeding, the deadlines under these Rules shall be suspended day-for-day from the date of the request until any party informs the Tribunal that the proceeding should resume.
- 18.4** Should the parties so agree, the Tribunal shall retain a separate mediator to sit with the arbitrator(s) during the arbitration hearing. Such mediator would be available to conduct mediation sessions during the arbitration hearing, without the arbitrator(s) being present, to explore the possibility of settlement.
- 18.5** The Tribunal should not be informed of any settlement offers or other statements made during settlement negotiations or mediation between the parties, unless both parties consent.

Rule 19: Actions against the CPR Institute or Arbitrator(s)

- 19.1** Neither the CPR Institute nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

Rule 20: Waiver

20.1 A party knowing of a failure to comply with any provision of these Rules, or any requirement of the arbitration agreement or any direction of the Tribunal, and neglecting to state its objections promptly, waives any objection thereto.

Rule 21: Interpretation of Rules

21.1 The Tribunal shall interpret and apply these Rules insofar as they relate to the Tribunal's powers and duties. When a difference arises among the arbitrators concerning the meaning or application of these Rules, it shall be decided by a majority vote. All other Rules shall be interpreted and applied by the CPR Institute.

CPR PRINCIPLES

CPR brings a distinct viewpoint to the field of domestic and international dispute resolution. Its tenets:

- 1.** Most disputes are best resolved privately and by agreement.
- 2.** Principals should play a key role in dispute resolution and should approach a dispute as a problem to be solved, not a contest to be won.
- 3.** A skilled and respected neutral third party can play a critical role in bringing about agreement.
- 4.** Efforts should first be made to reach agreement by unaided negotiation.
- 5.** If such efforts are unsuccessful, resolution by a non-adjudicative procedure, such as mediation, should next be pursued. These procedures remain available even while litigation or arbitration is pending.
- 6.** If adjudication by a neutral third party is required, a well-conducted arbitration proceeding usually is preferable to litigation.
- 7.** During an arbitration proceeding, the door to settlement should remain open. Arbitrators may suggest that the parties explore settlement, employing a mediator if appropriate.
- 8.** Arbitration proceedings often can be conducted efficiently by the Arbitral Tribunal without administration by a neutral organization, or limiting the role of such an organization to assistance in arbitrator selection or ruling on challenges to arbitrators, if necessary.

The CPR Rules for Expedited Arbitration of Construction Disputes reflect these principles.

CPR Institute is the leading global **advocate** and **resource** for preventing and resolving business disputes.

Rules for Expedited Arbitration of Construction Disputes is only one part of an arsenal of materials that we have created specifically for the construction community. For a complete listing of construction resources, please go to **www.cpradr.org** and click on Industries and Practice Groups.

In addition to our work in the construction industry, we also offer a wide range of conflict prevention and management information and services in the following areas:

- Arbitration
- Banking and Financial Services
- Domain Name Disputes (ICANN)
- Employment

- Energy, Oil, and Gas
- Europe/International
- Franchise
- Information Technology

- Insurance
- Mass Claims
- Patent and Trade Secret
- U.S./China Disputes

CPR's wealth of intellectual property and published material has educated and motivated general counsel and their firms around the world and helped reduce costs and risks associated with conflict. CPR's proprietary panel of esteemed arbitrators and mediators has provided resolutions in thousands of cases, with billions of dollars at issue, worldwide.



CPR

International Institute for
Conflict Prevention & Resolution

575 Lexington Avenue
21st Floor
New York, NY 10022
USA
tel +1.212.949.6490
fax +1.212.949.8859
www.cpradr.org