

### MEDIATION & ARBITRATION RULES

**Notice/Commencement of Mediation/Arbitration.** Any Party having a Claim (“Claimant”) against any other Party (“Respondent”) (collectively, the “Parties”) shall notify each Respondent in writing and provide a copy to the Mediator/Arbitrator (as defined below)(the “Demand”), stating plainly and concisely:

- (1) the nature of the Claim, including the date, time, location, persons involved and Respondent’s role in the Claim;
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and,
- (3) Claimant’s proposed remedy.

In no event shall any Claim be asserted after the date when institution of legal or equitable proceedings based upon such Claim would be barred by the applicable statute of limitations.

#### **Mediation/Arbitration.**

- (1) The Mediator shall be the Arbitration & Mediation Center of Arizona (“AMCA”), 8701 E. Vista Bonita Drive, Suite 210, Scottsdale, Arizona 85255 (Facsimile No. 480-585-8585). The Parties shall be notified of the mediator/arbitrator assigned to the matter within five (5) business days from AMCA’s receipt of the demand for arbitration. Alternatively, AMCA may provide the Parties with a list of available mediators/arbitrators from which to select, along with selection instructions, within the same five (5) business period.
- (2) Within five (5) business days after the receipt of the Notice, or eight (8) days from the date the Notice was sent, the Respondent(s) shall respond to the demand in writing, by filing a written answer with AMCA, with copies to the Claimant and other Respondents, if any.
- (3) AMCA shall initially attempt to facilitate a resolution of the matter through mediation. The mediation shall be conducted at AMCA’s offices. All mediation discussions are privileged and confidential. Persons who are not Parties are not allowed to attend the mediation conference without

the consent of the Parties. Any mediation resolution may be enforced in a court of law. Each of the Parties to a Claim will bear its own costs incurred prior to and during the negotiation and mediation proceeding described herein, including the fees of its attorney or other representative. If, at any time during the course of the mediation, either AMCA or either of the Parties believe that a stalemate has been reached, AMCA shall schedule a single-hearing arbitration hearing, without any Party being entitled to pre-hearing discovery (other than a demand for, and exchange of, all relevant documents and correspondence), unless otherwise agreed by the Parties and AMCA.

- (4) The arbitration hearing shall be held at AMCA's offices on five (5) days' notice to the Parties. If AMCA declines, for any reason, to arbitrate the matter, then the matter will be arbitrated by a mutually agreeable party to be identified within five (5) business days following AMCA's decline notice. If the Parties are unable to agree to an arbitrator, then the matter shall be submitted to the American Arbitration Association.
- (5) The mediation costs and expenses shall be shared by the Parties and, if and to the extent required, each Party will pay its respective share of the costs in advance of the mediation as a condition to its continuation of the prosecution or defense of the Claim.. The arbitration costs and expenses of each party shall be borne by the non-prevailing Party.
- (6) At the discretion of the arbitrator, the AMCA Arbitration Rules, or the Construction Industry Arbitration Rules (Fast Track) of the American Arbitration Association, then in effect, where not in conflict with this Section, shall be utilized in the arbitration hearing and the law of the evidence of the State of Arizona shall govern the presentation of evidence at such hearing.
- (7) An award rendered by the arbitrator appointed under and pursuant to this Agreement shall be final and binding on all parties to the proceedings, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. To that end, the arbitrator shall have the right to render decisions with regard to all remedies that would otherwise be available at law or in equity to the Parties and the arbitrator shall have jurisdiction over all matters of fact and law necessary to render a decision.
- (8) Should a dispute arise as to whether or not any dispute arising under the terms of this Agreement is subject to this arbitration provision, the matter shall be decided by arbitration in the same manner and with the same effect as all disputes arising out of this Agreement. If the dispute proceeds to arbitration, the arbitrator shall have jurisdiction over all matters of fact and law necessary to render a decision.

- (9) All mediation discussions are privileged and confidential. Persons who are not Parties are not allowed to attend the mediation conference without the consent of the Parties. Any mediation resolution may be enforced in a court of law.
  
- (10) If the Parties agree to a resolution of any Claim through mediation in accordance with these Rules and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file a demand for arbitration with AMCA (or the American Arbitration Association, if AMCA is unwilling or unable to arbitrate the matter) without the need to again comply with the mediation procedures set forth above. In such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, reasonable attorneys' fees, costs and expenses.