

# CONSTRUCTION ABRITRATION RULES & PROCEDURES

## 1. AGREEMENT OF PARTIES:

1.1 DMA's Expedited On-Site (OS) Arbitration or Expedited Arbitration shall be held in accordance with these Rules and Procedures which shall be considered part of the parties' arbitration agreement if:

1.11 the parties' arbitration agreement specifies arbitration by **DMA Dispute Management & Avoidance** or under **DMA Dispute Management & Avoidance Rules and Procedures**.

1.12 or under a separate agreement signed by interested parties before or after the original contract was signed, or the parties agree to arbitrate under these rules and procedures.

1.2 The parties may mutually agree to modify these **Rules and Procedures**, provided that any such modifications do not violate any state or federal laws and DMA agrees to such changes in writing.

2. APPLICATION OF RULES AND PROCEDURES: These **Rules and Procedures** shall be applied to all parties to any dispute, disagreement, or contract ambiguity who signs a DMA "**Demand to Arbitrate**" or "**Submission To Arbitration**" form or otherwise agree in writing to accept the Rules and Procedures.

3. PANEL OF ARBITRATORS: All DMA Arbitrators are licensed General Contractors, Architects, or Engineers. All Arbitrators selected by DMA have been trained and certified as Arbitrators by the Institute of Construction Management (ICM), or comparable certification program. All DMA Arbitrators are independent contractors, none is an employee of DMA. Generally, DMA Arbitrators are non-lawyers. All are experienced professionals with extensive experience in various aspects of design and construction. DMA shall appoint a qualified DMA Arbitrator whose qualifications and experience relate to the type of dispute from the panel of available Arbitrators at the time the demand for arbitration is processed.

4. CONFIDENTIALITY: All DMA procedures and proceedings are private and confidential shall remain so. DMA will not release any information about any case or results to any entity including but not limited to any person, company, organization, or the media, unless the entity is a party to this arbitration. DMA may release records of the arbitration case when agreed to, in writing, by all parties to the arbitration, or when so ordered by a court of competent jurisdiction.

4.1 **ALL PARTIES TO AN ARBITRATION UNDER THESE RULES AND PROCEDURES, AGREE TO MAINTAIN THE CONFIDENTIALITY OF THESE PROCEEDINGS AND OF THE**

DETAILS OF THE CASE. THE DMA ARBITRATOR SHALL AND WILL KEEP ALL INFORMATION RECEIVED AT THE HEARING OR CONNECTION WITH THE HEARING CONFIDENTIAL. ALL PARTIES AGREE THAT NEITHER THE DMA ARBITRATOR NOR DMA SHALL BE SUBJECT TO SUBPOENA BY ANY PARTY IN ANY SUBSEQUENT LEGAL PROCEDURE.

- 4.2 If any party breaches these Rules and Procedures, and later subpoenas any arbitration documents or the DMA Arbitrator, or any DMA representative to testify at any subsequent arbitration proceeding (or other legal matter), the party(s) shall pay for any time spent pursuant to the prevailing Fee Schedule, whether they testify or not.
  - 4.3 **RELEASE OF INFORMATION TO THE COURTS FOR COLLECTIONS:** Any DMA Award is enforceable by the courts. Collection is up to the parties themselves. Should any party to the dispute not remit payment pursuant to an Award by the time allotted, the case may be submitted by the party justly entitled to the appropriate court for a **"Judgment"** to be entered, producing a public record of the case.
  - 4.4 These expedited procedures involve an inherent risk of loss of **confidentiality** as detailed in Section **30, COMMUNICATION BETWEEN THE PARTIES AND THE TRIBUNAL.**
  - 4.5 The DMA Arbitrator may order compensatory damages to be paid for **breach of confidentiality** during or after the Arbitration procedures, or in a separate suit, against any party causing a verifiable loss.
  - 4.6 Each party on whose behalf information or witnesses are subpoenaed, or disclosures of confidential information is sought in violation of this section 4, hereby agrees to defend, indemnify, and hold DMA Dispute Management & Avoidance, its employees, representatives, and panel members from all claims, liabilities, damages, and expenses, including reasonable attorney's fees arising therefrom.
- 5 **IMMUNITY:** DMA invokes and incorporates herein by this reference all California statutes and other laws that confer immunity upon the company, its' employees, its' subcontractors, representatives, and its panel member Arbitrators. DMA and its panel member Arbitrators also invoke and incorporates herein by this reference any and all laws limiting disclosure of these private proceedings.
  6. **JURISDICTION AND AUTHORITY:** When an agreement to arbitrate under these Rules and Procedures has been entered into by the parties, that agreement thereby authorizes DMA to act as the Tribunal in the arbitration proceedings. The authority and duties of DMA Dispute Management & Avoidance shall be those as specified in these Rules and Procedures, in any amendment to the Rules, and in the parties' arbitration agreement.
  7. **APPLICATION & INTERPRETATION OF THE RULES AND PROCEDURES:**
    - 7.1 The DMA Arbitrator shall interpret and apply these rules and procedures. When in doubt, the DMA Arbitrator(s) shall endeavor to ascertain and follow the *intent* of

the Rules and Procedures. Should more than one DMA Arbitrator preside and more than one interpretation of these rules and procedures manifest, a majority decision of the interpretation shall prevail, whenever possible. Otherwise, the interpretation shall be referred back to the DMA Tribunal for final resolution.

- 7.2 DMA reserves the right, in compliance with all applicable State or Federal laws, to make the final decision on any and all other questions including the scope of the agreement and/or any other questions concerning the application and interpretation of these Rules and Procedures
- 7.3 In an effort to provide the best and fairest service possible, and in an effort to keep up with changes in law and changes in the industry, DMA reserve the right to periodically modify these Rules and Procedures.

## 8. FAILURE TO FOLLOW THE RULES AND PROCEDURES:

- 8.1 Should any participant to these proceedings not follow these Rules and Procedures in such a way that it significantly impairs the impartiality, fairness, or confidentiality of the arbitration process, DMA should be contacted at the earliest possible opportunity.
- 8.2 The DMA Arbitrator may at his/her discretion sanction any party to the proceedings for failure to abide by these Rules and Procedures.
- 8.3 **ACCEPTANCE OF RULES AND PROCEDURES:** Any party to these proceedings who is aware of any violation of or noncompliance with these Rules and Procedures must file an objection with DMA in writing within two (2) days of acquiring such knowledge. The objection must be made before the decision is rendered by the DMA Arbitrator. Failure to file an objection within two (2) days, or failure to file an objection before the decision is rendered by the DMA Arbitrator, may, at DMA's or its arbitrator's discretion constitute a waiver of the party's right to object, and represent the party's acceptance of the procedures as they transpired.

## 9. MODIFICATION AND CHANGES OF TIME PERIOD SPECIFIED:

The DMA Arbitrator and all the parties to the proceedings may mutually agree to modify or change any time period stated in these Rules and Procedures. Any such changes must be made in writing, and a copy sent to DMA. Except for the time period to make the award, DMA Dispute Management & Avoidance or the DMA Arbitrator may, and for only good cause, extend any time period stated in these Rules and Procedures. DMA Dispute Management & Avoidance shall notify the parties of any such changes.

The Award shall be rendered within the time period stated, however, the Award will not be disclosed to the parties by DMA until the full payment for the proceedings has been received, funds transferred into DMA account, and the parties check(s) have cleared, therefore wire transfers or cashier checks are the recommended payment methods for expedited matters.

10. **POSTPONEMENTS:** The parties to a dispute under these Rules and Procedures have voluntarily entered into an expedited arbitration process, and postponements will not be allowed, unless the requesting party shows **exceptionally good cause**. Qualifying “good cause” must be “good cause” that could not have been anticipated when the parties signed the agreement to arbitrate expeditiously. The DMA Arbitrator shall be the sole judge of whether the cause shown represents **exceptionally good cause** that might substantially affect the outcome of the decision and warrant a postponement.

10.1 The granting of a postponement must take place before the commencement of the hearing.

10.2 If the DMA Arbitrator agrees to a postponement, the requesting party must pay postponement fees pursuant to the Fee Schedule, and the postponement will not be granted until such postponement fees are received by DMA.

10.3 The DMA, and/or the DMA Arbitrator reserve the right to postpone and reschedule any hearing or procedure.

11. **DISCONTINUANCE OF ARBITRATION:**

At all times, DMA reserves the right to discontinue the administration of any arbitration case due to a conflict with any State or Federal law or regulation or due to the conduct of any party. At the sole discretion of DMA and depending on the stage of the proceedings, DMA may refund a portion of the arbitration fees paid by the parties.

12. **FEES AND COMPENSATION:**

12.1 The fees for administration and Arbitration services under these Rules and Procedures shall be those listed in DMA Fee Schedule in effect at the time the “Demand for Arbitration” is filed with DMA. Should DMA choose to preside over any arbitration governed by any other set of rules and procedures from another Tribunal, fees may differ, and will be determined on a case-by-case basis by DMA.

12.2 Any expenses incurred by the DMA Arbitrator, by DMA, or incurred by any representative acting on behalf of the DMA Arbitrator or DMA, that are reasonably related to the case shall be born equally by the parties to the arbitration, unless the contract calls for such expenses to be paid for otherwise, or the DMA Arbitrator in the Award deems any party to pay all or part of such expenses. This includes payment by the parties for Attorney’s Fees incurred by DMA that are reasonably related to the case.

13. **ESTABLISHING ARBITRATION**

13.1 **ESTABLISHING EXPEDITED ON SITE (OS) ARBITRATION:** When a contractual agreement for binding arbitration exists, and a dispute arises **BEFORE** commencement or **DURING** the work under the contract, Expedited **On-Site**

**Arbitration (OS)** shall be initiated in accordance with these Rules and Procedures. The OS Hearing shall take place directly at the jobsite and shall be held within 2 days of serving the opposing party with the “demand to arbitrate”, and the decision shall be rendered within 2 days of the conclusion of the OS Hearing (subject to the availability of the DMA Arbitrator). The OS Hearing may be informal, but it shall be binding and enforceable by the courts. Either party may bring advocates, witnesses or experts as they deem necessary, but each party shall bear their own costs regardless of outcome. The DMA Arbitrator is authorized to clarify the contract or specifications, determine work to be done (or redone), and/or make a monetary award. The DMA Arbitrator may also determine the cancellation of the contract if so requested by either party. Three (3) copies of the complete "evidence package" shall be provided to DMA at the time the demand to arbitrate or submission to arbitration is submitted to along with all appropriate fees as detailed in the Fee Schedule.

**13.11 JOINT SUBMISSION TO OS ARBITRATION:** Both parties to a dispute may jointly file a “**Submission to OS Arbitration.**” The party who fills in their name on the submission under claimant will be referred to as “**claimant**”, and the party who fills their name under respondent will be referred to as “**respondent.**” The Submission to OS Arbitration shall state the nature of the dispute, the amount(s) involved (if any), and the remedy sought. No service on the parties is required. OS Arbitration shall be had within two days of filing with DMA, and the decision shall be rendered generally within 2 days of the conclusion of the OS Hearing (subject to the availability of the DMA Arbitrator).

**13.12 ONE PARTY SUBMISSION TO OS ARBITRATION:** When a contractual agreement for binding arbitration exists, and a dispute arises before commencement, or during the work under the contract, the party initiating the arbitration, the “**claimant**”. The claimant shall give written notice in the form of a “demand to arbitrate” to the opposing party, the “**respondent**”, of their intention to arbitrate the dispute. The “demand to arbitrate” shall state the nature of the dispute, the amount involved (if any), and the remedy sought. OS Arbitration shall be held within 2 days of service on the opposing party of the “**demand to arbitrate**”, and the decision shall be rendered within 2 days of the conclusion of the OS Hearing (subject to the availability of the DMA Arbitrator).

**13.2 ESTABLISHING EXPEDITED ARBITRATION:** When a contractual agreement for binding arbitration exists, and a dispute arises **AFTER** the completion or cessation of work under the contract, the party initiating the arbitration, the claimant, shall give written notice in the form of a “**demand to arbitrate**” to the opposing party, the respondent, of their intention to arbitrate the dispute. The hearing shall be held within 5 days of serving the opposing party with the “demand to arbitrate”, and the

decision shall be rendered within 5 days of the conclusion of the hearing (subject to the availability of the DMA Arbitrator). The "demand to arbitrate" shall state the nature of the dispute, the amount involved (if any), and the remedy sought. Three (3) copies of the complete "evidence package" shall be provided to DMA at the time the claimant submits their demand to arbitrate to DMA along with all appropriate fees as detailed in the Fee Schedule. Expedited Arbitration may also be initiated by a joint submission to arbitration.

- 13.3 EVIDENCE PACKAGE:** The **evidence package** shall consist of the entire contract including the parties' agreement to arbitrate, along with any relevant addenda, change orders, relevant building plans, a list of the names and addresses and phone number of their attorney and each witness that will be providing testimony, and other documentary evidence along with any subpoena requests. Three (3) copies of the evidence package must be provided to DMA at the time the parties submit their demand to arbitrate, submission to arbitration, or counterclaim.

**13.31** It is unnecessary for the party filing the counterclaim to re-submit the same evidence already submitted by the claimant in their evidence package.

- 13.4 FEES:** The appropriate fees must be provided to DMA at the time the claimant submits their demand to arbitrate or submission to arbitration as established in the Fee Schedule.

- 13.5 SERVICE OF NOTICE:** With the exception of joint filing, the respondent must be "**served**" with the demand to arbitrate. Valid "**service**" shall be established either by the terms of the contract, or if not specified in the contract, then as set forth below. The outside of the "demand to arbitrate" envelope should declare, "**TIME DATED MATERIAL ENCLOSED**" and "**EXTREMELY URGENT,**" and "**PRIVATE AND CONFIDENTIAL,**" and should also declare, "**CONTACT ADDRESSEE IMMEDIATELY**" in all capitals, boldface type, and in a larger point size than all other writing on the envelope.

**Service to be accomplished as follows:**

- 13.51** service by certified mail or private delivery service company to the address of the respondent as indicated on the contract signed for per the standard procedures of the mail service or the private delivery service company. **Signature required.**
- 13.52** service may also be provided by personal service by any neutral delivery person over 18 years of age. Delivery to the address of the respondent as indicated on the contract and signed for by the respondent or verified in writing by the party providing service. **Signature required.**

13.53 or **service** may also be as directed by the DMA tribunal.

14. **RESPONDING TO A DEMAND TO ARBITRATE:** The respondent will be requested to contact DMA upon receipt of service. Pursuant to these Rules and Procedures, if there is a written arbitration agreement, DMA is authorized to proceed with the arbitration whether or not the respondent responds to the demand to arbitrate.

14.1 **FILING A COUNTERCLAIM:** The respondent may file a counterclaim against the claimant.

14.11 **EXPEDITED OS ARBITRATION:** The counterclaim may be filed with DMA at any time prior to the commencement of the OS Hearing. If a counterclaim is filed, the OS Hearing shall be postponed one (1) day, if so requested, by either party to the Hearing, with postponement fees paid by the party requesting the postponement.

14.12 **EXPEDITED ARBITRATION:** The counterclaim must be filed by the respondent within three (3) days of the respondent's address being served the demand to arbitrate. If a counter claim is filed, the Hearing shall be postponed two (2) days, if requested, by the either party to the Hearing, postponement fees paid by the party requesting the postponement.

14.13 DMA will provide a copy of the counterclaim to the claimant and the same procedures will then apply to both the original claim and the counterclaim.

15. **AMOUNT OF CLAIM OR REMEDY SOUGHT:**

15.1 It is each parties' responsibility to **CLEARLY** state the **ENTIRE** remedy or relief sought.

15.11 In **OS ARBITRATION** either party may amend their claim or remedy at any time before or during the OS Hearing, up until the time the OS Hearing is concluded. If either party to the OS Hearing is unprepared to address any such new or modified claims, they may file for "Ensuing" Expedited Arbitration pursuant to Section 27. ENSUING EXPEDITED ARBITRATION

15.12 In **EXPEDITED ARBITRATION** the claim or remedy sought as detailed by each party on their claim or counterclaim may not be modified and sets the limits of the remedies each party is seeking. However, the DMA Arbitrator may modify the claim or remedy as they deem necessary for a fair and reasonable decision, provided that the DMA Arbitrator, determines that the value of the decision does not exceed the value of the claim or remedy sought as represented in each party's claim or counterclaim.

15.13 DMA does not provide a forum for allegations of violations of Criminal Law. Criminal allegations such as fraud shall not be arbitrated by DMA. Criminal allegations must be submitted to the appropriate public authorities.

15.14 It shall not be the responsibility of DMA to punish any party to any dispute. Punitive damages shall not be awarded.

15.2 **ATTORNEY'S FEES, COSTS & EXPENSES:** Unless the parties' contract or arbitration agreement specifically specifies otherwise:

15.21 In expedited **OS Arbitration**, each party shall pay for their own attorney fees, expert fees, consultant fees, costs, expenses, and the like.

15.22 In **Expedited Arbitration** the prevailing party may recover reasonable attorneys' fees, expert fees, consultant fees, costs, expenses, and the like, to the extent that the DMA Arbitrator determines is fair and reasonable.

## 16. DESIGNATION OF THE ARBITRATOR:

16.1 If the parties' contract or arbitration agreement specifies a particular DMA Arbitrator by name, and that DMA Arbitrator is available, the named DMA Arbitrator shall preside over the matter. If the specified DMA Arbitrator is not available, the provisions of Section 16.3 NORMAL DESIGNATION PROCEDURES shall apply.

16.2 If the parties' contract or arbitration agreement specifies a specific method of selection or appointment of the Arbitrator, that designated process or procedure shall be followed, provided it can be followed within the time constraints of these Rules and Procedures. If the specific method of selection or appointment cannot be accomplished within the time constraints, Section 16.3 NORMAL DESIGNATION PROCEDURES shall apply.

### 16.3 NORMAL DESIGNATION PROCEDURES

16.31 In **OS Arbitration**, DMA shall appoint a DMA Arbitrator, who is located reasonably close to the jobsite in dispute, from the panel of available DMA Arbitrators whose qualifications and experience are most applicable to the type of project in dispute. Prior to the commencement of the OS hearing, each party to the dispute shall be provided with a short biography of the **DMA Arbitrator** appointed to preside over the case.

16.32 In **Expedited Arbitration**, the parties to the dispute may choose their own DMA Arbitrator from a list of three (3) potential DMA Arbitrators. DMA shall provide each party to the dispute a short biography of three (3) DMA Arbitrators, who are located reasonably close to the jobsite in dispute, and whose qualifications and experience are most applicable to the type of project in dispute. The parties shall prioritize their preference for DMA Arbitrator by numbering them one (1) most preferred to three (3) least preferred and inform DMA of their choice within one (1) day of receiving the three (3) names. Should any party not inform DMA of their preference DMA will assume that all potential Arbitrators are equally acceptable to that



party. DMA will endeavor to provide the DMA Arbitrator with the highest preference rating of the parties.

- 16.4** If, for any reason, the designated DMA Arbitrator is unable or unwilling to serve, or if any party fails to properly notify DMA of their preference, DMA shall designate and appoint a DMA Arbitrator. Once an arbitrator has been designated, with the exception of section the applicability of Section 16.5 NEUTRALITY OF THE ARBITRATOR, the parties waive their right to object to the designated DMA Arbitrator.
- 16.5** **DISCLOSURE OF NEUTRALITY & DISQUALIFICATION OF THE ARBITRATOR:** It is the responsibility of each party to the proceedings and the responsibility of the DMA Arbitrator to immediately disclose any relationship between the DMA Arbitrator and any of the parties to the dispute, be it social, professional, family relation, rumor, or otherwise even if the relationship is such that it would not likely affect the decision. Furthermore, any Arbitrator selected must immediately notify DMA Dispute Management & Avoidance of any known personal or financial interest in the outcome of the Arbitration and shall further disclose any circumstance that would be likely to affect his/her impartiality, including any current or past relationships with any of the parties or their representatives, witnesses, or other participants.
- 16.51** Upon disclosure of the knowledge of any such relationship, or conflict of interest, any party to the proceeding may request the disqualification of the Arbitrator without prejudice. If the Arbitrator does not elect to withdraw, DMA will decide if the circumstances merit the appointment of a new DMA Arbitrator, and DMA's decision will be final. The parties shall equally pay for the limited time spent by a disqualified DMA Arbitrator, if any.
- 16.52** Should a designated DMA Arbitrator withdraw or be removed; DMA shall immediately appoint a new DMA Arbitrator pursuant to pursuant to this Section 16. DESIGNATION OF THE ARBITRATOR, and the hearing shall take place on schedule or be rescheduled for the earliest possible time that DMA can provide a new DMA Arbitrator.
- 16.53** Should any party to the proceedings request the disqualification of a second DMA Arbitrator, or others after that, it shall be up to the DMA tribunal to determine whether the DMA Arbitrator shall be disqualified. DMA shall notify the parties of its determination and that determination shall be final.
- 16.54** Should all parties to the proceedings choose to continue with the DMA Arbitrator notwithstanding the relationship or conflict of interest or any other circumstance, all parties to the proceedings shall stipulate, in writing, that the DMA Arbitrator not be disqualified for those reasons, and all parties waive any rights they may have had to disqualify the DMA Arbitrator for the reasons disclosed, or to object to the Arbitrators decision.

**17. NUMBER OF ARBITRATORS:**

- 17.1** If the number of Arbitrators is not specified in the parties' contract or agreement to arbitrate, one (1) DMA Arbitrator shall decide the dispute. The parties to the dispute may mutually agree to appoint more than one DMA Arbitrator. Unless otherwise specified in the parties' contract or arbitration agreement, the number of appointed DMA Arbitrators shall always be an odd number. Arbitration fees and costs increase as the number of Arbitrators increases pursuant to the prevailing Fee Schedule.
- 17.2** When required by law or agreement, a "Coalition Panel" of three (3) DMA Arbitrators shall be selected in accordance with the law or the agreement. The decision shall be by majority vote unless otherwise provided by the law or the agreement.
- 17.3** **COALITION PANEL OF ARBITRATORS:** When no procedure is set forth by agreement or by law for appointing multiple Arbitrators, DMA shall provide the parties to the dispute a list of five (5) DMA Arbitrators, who are located reasonably close to the jobsite in dispute, whose qualifications and experience are most applicable to the type of project in dispute. Each party shall choose one DMA Arbitrator from the list, and DMA shall choose the third Arbitrator to complete the Coalition Panel. If both parties chose the same DMA Arbitrator in their first choice, both parties shall be allowed their second choice as well to fill the three positions. A similar process shall be used for a Coalition Panel of five (5) or more Arbitrators with the last unoccupied position chosen by DMA. DMA shall appoint any or all the Coalition Panel Arbitrators if, for any reason, the parties do not.
- 17.4** All the Coalition Panel Arbitrators shall preside over the hearing in concert.
- 17.5** At the conclusion of the hearing, the Coalition Panel Arbitrators shall retire to confer in any acceptable manner at any acceptable location as agreed by the Coalition Panel, to arrive at a binding decision/award. Such binding decision/award shall be based upon a majority vote unless otherwise provided by law or the agreement.
- 17.6** Should any of the Coalition Panel Arbitrators become unavailable or unable to enter a decision, at any time during or after the conclusion of the Hearing, and there is an even number of DMA Arbitrators remaining, the remaining Coalition Panel Arbitrators will deliberate until such a time as a majority vote is rendered by the remaining Coalition Panel Arbitrators, or if this is not possible, then the Arbitration will be vacated and a new Arbitration hearing begin.
- 17.7** All Coalition Panel Arbitrators participating at the time the decision is rendered shall sign the decision, and that decision shall be final.
- 17.8** DMA shall decide any procedural questions, which cannot be resolved by the Coalition Panel.

18. **NOTICE OF APPOINTMENT OF THE ARBITRATOR:** Once DMA has notified the selected DMA Arbitrator(s), the DMA Arbitrator(s) shall sign an acceptance confirming his/her appointment pursuant to these Rules and Procedures. Once DMA is in receipt of the DMA Arbitrators' acceptance, then DMA shall release the case file to the DMA Arbitrator(s).
19. **PARTY REPRESENTATIVES:** It is the intent of DMA to create an Arbitration process that is informal and easy to understand where virtually any party is capable of representing themselves.
- 19.1 Any party to an arbitration may present their own case or may elect to be represented by a representative of their choice. The representative may be an attorney, family member, union representative, or other form of advocate.
- 19.2 Any party who intends to be represented by an attorney as their advocate must immediately notify DMA, and provide the attorneys name, address, and phone number. DMA will notify the opposing party so the opposing party will have an opportunity to obtain an attorney if they so desire.
- 19.21 The filing party(s) must provide notification when they file their case in their evidence package, of their intent to retain an attorney for the hearing and must supply the name address and phone number of their attorney at that time.
- 19.22 Failure for any party to disclose the fact that they will be represented by an attorney in their evidence package could result in the hearing being rescheduled. DMA may impose a substantial postponement fee against the party causing the delay, and that fee shall be unrecoverable regardless of outcome.
- 19.3 Every party advocate(s) will be subject to all the conditions set forth in Section 4. CONFIDENTIALITY, and all other relevant terms and conditions of these Rules and Procedures.
- 19.4 Advocates who are not attorneys, shall provide their name, address and phone number to the DMA Arbitrator at the hearing.
- 19.5 DMA provides an expedited dispute resolution process. **There is an inherent risk of having inadequate time to obtain an attorney. All parties to an Arbitration under these Rules and Procedures accept this risk as a consequence of expedited matters. THE PARTIES WAIVE THE RIGHT TO AN ATTORNEY UNLESS THEIR ATTORNEY IS PRESENT AT THE HEARING.**
20. **INTERPRETERS:** All DMA arbitration proceedings shall be conducted in English. Any party needing an interpreter, or other representative for their understanding, shall make all the arrangements, and shall pay all the costs of the service. The party shall notify DMA if an interpreter or other representative is to be present at the hearings.

21. **PARTICIPATION & ATTENDANCE:** Unless specifically prohibited in the parties' contract or agreement, the following provisions shall apply:
- 21.1 If any party is unable or unwilling to attend any Hearing or other arbitration proceeding in person, they may, solely at their own expense, participate at any Hearing or proceeding via speaker phone, conference call, and/or fax or Email, but such participation shall be given only as much weight as the DMA Arbitrator deems it is entitled to after the consideration of any opposition to the Fax and Email submissions. It shall be the sole responsibility of the absent party to produce and provide any such electrical devices and connections, that the absent party deems necessary, at the hearing location, at the time of the hearing. A party utilizing these procedures assumes all the risks of the loss of transmission or the lack of receipt.
  - 21.2 Any party may be represented by an advocate.
  - 21.3 If any party refuses or neglects to appear at or to participate in any arbitration proceeding, and provides no advocate to participate on their behalf, the DMA Arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate.
  - 21.4 At or during any Hearing, the DMA or the DMA Arbitrator may attempt to contact any party who is not in attendance or otherwise represented, solely to encourage their immediate attendance or participation in person, or pursuant to section 21.1.
22. **FAILURE TO APPEAR:** Failure for a party to appear does not result in the automatic default Award against the absent party. The hearing will be held with the party who does attend, and the attending party is still required to submit their evidence and prove their claim or position.
23. **PRE-HEARING CONFERENCES:** In some cases, at the discretion of the DMA Arbitrator, and upon the request of any party to the dispute, the DMA Arbitrator may direct the parties to appear at a Pre-Hearing Conference. Unless the parties agree to otherwise, the Pre-Hearing Conference shall be limited to the discussion of identifying and delineating the issues under consideration, exchanging evidence, identifying witnesses, as well as stipulating to non-contested issues and to authenticating documents.
- 23.1 Should the DMA Arbitrator determine that a pre-hearing conference is necessary, the DMA Arbitrator may conduct a "Pre-conference Teleconference" to determine if the Pre-Hearing Conference should be conducted by teleconference and/or fax, or if it shall be held at the jobsite or other neutral location, solely at the discretion of the DMA Arbitrator.
  - 23.2 The parties to the pre-hearing conferences shall bring with them all documentary or physical evidence for their case, but not their witnesses, and all relevant fees must be paid for as per the Fee Schedule. The parties shall have their witnesses "on call" should all parties elect to proceed expeditiously.
  - 23.3 If all the parties to the dispute are present at the Pre-Hearing Conference and all

are prepared to proceed with the case without delay, at the mutual and joint request of all the parties, and solely at the discretion of the DMA Arbitrator, the Pre-hearing Conference may be concluded and the commencement of the OS Hearing or Expedited Hearing may commence forthwith, subject to the availability of the DMA Arbitrator.

**24. LOCATION OF THE HEARING:** The hearing shall be located at the jobsite unless DMA, and/or the DMA Arbitrator directs otherwise. If directed to another location, that location shall be a neutral location chosen by DMA, unless the parties agree otherwise. In accordance with the expedited nature of these matters, when choosing a location, expediency shall take precedence over convenience.

**24.1** DMA shall notify the parties and the DMA Arbitrator(s) of the location of the hearing in the demand to arbitrate.

**24.2** If the hearing is located away from the jobsite, at the discretion of the DMA Arbitrator the hearing may be reconvened at any time at the jobsite.

**25 THE HEARING & ORDER OF THE PROCEEDINGS:** The DMA Arbitrator may vary this procedure but shall allow each side full and equal opportunity present their case and present all relevant evidence and material at the hearing. The following procedures shall be followed at the hearing:

**25.1 INTRODUCTIONS:** The DMA Arbitrator will start with informal cordial introductions between the DMA Arbitrator and all the parties and their witnesses. The DMA Arbitrator will direct the participants to their appropriate seats, if applicable.

**25.2 OPENING STATEMENT:** The DMA Arbitrator will begin with an opening statement explaining the hearing procedure.

**25.3 DISCLOSURE STATEMENT:** The DMA Arbitrator shall provide his/her disclosure statement pursuant to Section 16.5 DISCLOSURE OF NEUTRALITY.

**25.4 QUALIFYING THE DMA ARBITRATOR:** The DMA Arbitrator shall, in the presence of the participating parties, read aloud, then sign an oath of office, affirming his/her promise to render an impartial decision in the dispute. The DMA Arbitrator, once sworn, has the authority to administer the Witness Oaths.

**25.41** If for any reason, the DMA Arbitrator feels an impartial decision cannot be rendered, DMA Arbitrator shall notify the parties and shall withdraw as the Arbitrator. DMA will appoint another qualified DMA Arbitrator and the hearing will be rescheduled. There will be no postponement fee under these circumstances.

**25.5 WITNESS OATH:** The DMA Arbitrator shall administer the Witness Oath. All persons that will be giving testimony at the hearing shall take the oath. Attorney advocates need not take the Witness Oath unless they will be offering testimony.

- 25.6 OPENING STATEMENTS:** The DMA Arbitrator may ask for brief opening statements from the claimant then the respondent. Throughout the hearing, the opposing party shall refrain from interrupting the party speaking.
- 25.7 PRESENTATION OF CASES:** The DMA Arbitrator has the right to interrupt and ask questions, at any time, of any party or any witness about any relevant subject.
- 25.71** The claimant shall present their evidence and witnesses supporting their claim. The respondent shall have the opportunity to cross-examine the claimant and the claimant's witnesses.
- 25.72** The respondent shall present their evidence and witnesses supporting their claim. The claimant shall have the opportunity to cross-examine the respondent and the respondent's witnesses.
- 25.73** The DMA Arbitrator may request additional information and/or evidence from any party.
- 25.8 CLOSING STATEMENTS:** After the DMA Arbitrator has determined that each party has presented all their evidence, the DMA Arbitrator shall ask for brief closing statements from the claimant then the respondent.
- 25.9 CLOSE THE HEARING:** The DMA Arbitrator shall provide a closing statement then officially close the hearing and retire to review the evidence and render the decision.
- 26. VOLUNTARY SETTLEMENT OF THE PARTIES:** The most preferred resolution for an arbitration matter is settlement. At any time during the hearing, any party may request a recess to discuss a settlement privately between the parties. The DMA Arbitrator may provide a recess for any such settlement discussion at any time during the hearing. The DMA Arbitrator will remove themselves from the hearing location and leave the parties to endeavor to settle the matter in private. At any time during the hearing if the DMA Arbitrator feels that a negotiated settlement is likely, the DMA Arbitrator may suggest that the parties attempt such a settlement conference.
- 26.1** Should the parties come to a settlement agreement, the DMA Arbitrator will rejoin the parties. Any person in attendance may produce a written form of the parties' settlement agreement. The DMA Arbitrator shall guide the transcriber to phrase the agreement in such a manner that it be enforceable, if appropriate. All the parties to the arbitration will then sign the settlement agreement, followed by the DMA Arbitrator signing the agreement. Once signed by the DMA Arbitrator the agreement shall become the decision.
- 26.2** Should the parties not come to a settlement agreement, the DMA Arbitrator shall rejoin the parties and resume the arbitration hearing.
- 26.3** The DMA Arbitrator may allow repeated reasonable requests for such settlement conferences.
- 26.4 DMA RATIFICATION SERVICES:** In some cases, parties to a dispute may negotiate a

settlement agreement independently of Arbitration and want their agreement to be ratified by a DMA Arbitrator. The parties may file for OS arbitration, or Expedited Arbitration even after they have already reached a negotiated settlement to have a DMA Arbitrator sign their agreement. The parties' settlement agreement, once signed by the DMA Arbitrator shall become the decision.

27. **ENSUING EXPEDITED ARBITRATION:** Should either party to an OS Hearing feel they are not adequately prepared to proceed, **prior to the conclusion of the OS Hearing**, either party may request for a "**Stay**" of the OS Hearing, and **concurrently** file for the hearing to be reconvened under the rules of **Ensuing Expedited (EE) Arbitration**.

- 27.1 The filing for EE Arbitration must take place at the OS Hearing in conjunction with the filing for Stay of the OS hearing.
- 27.2 If a Stay is requested, unless the DMA Arbitrator determines otherwise, the OS hearing shall continue until all parties present have submitted all their relevant evidence, before the DMA Arbitrator Stays the hearing.
- 27.3 The hearing shall remain "open" during the stay, and if for any reason, the EE Arbitration does not reconvene, the DMA Arbitrator may close the hearing and render a decision on the evidence presented at the original OS hearing.
- 27.4 All parties to the EE Arbitration shall have two (2) days from the Stay of the OS hearing during which the parties may modify the amount of their claim or remedy sought in the EE Arbitration. The EE Arbitration shall continue within 5 days of the stay of OS hearing. Generally, only monetary awards are requested in Expedited Arbitration. The parties may replace claims for work to be done or corrected, with claims for monetary amounts.
- 27.5 The DMA Arbitrator in his/her closing remarks may ask if any party wants to file for Stay of the OS hearing and to reconvene under the rules of Expedited Arbitration. In the absence of such a request to reconvene during or before the OS hearing, the parties waive any right to have the dispute heard in Ensuing Expedited Arbitration, the hearing will be closed, and the decision will be final.
- 27.6 All other provisions of Expedited Arbitration as detailed in these Rules and Procedures shall prevail over any such EE Arbitration.
- 27.7 The same DMA Arbitrator shall preside over both the OS hearing and the EE Arbitration (subject to the availability of the DMA Arbitrator).

28. **SOS ARBITRATION**

**FAILURE TO COMPLY WITH AN OS ARBITRATION AWARD FOR DIRECTION OF WORK:** Should the OS Arbitrator enter an award that directs any party to the dispute to perform work, or to re-do work already performed, and the obligated party does not perform the work per the terms and conditions of the award, or does not perform the work in a satisfactory manner, or does not perform the work in the time allotted by the DMA Arbitrator, the prevailing party shall re-file for Subsequent On-Site (SOS) Arbitration. Any such "SOS Arbitration" shall follow the same Rules and Procedures of OS Arbitration with the exception of the award which shall only be monetary, and at the discretion of the DMA Arbitrator, the

prevailing party may be awarded reasonable attorneys' fees, and may be reimbursed for any and all costs and expenses incurred in relation to both the SOS Arbitration and in the original OS Arbitration. The Award will not include punitive damages. Should the DMA Arbitrator who presided over the OS Hearing be unavailable, DMA may send another DMA Arbitrator to preside over the SOS Hearing. All other provisions of OS Arbitration as detailed in these Rules and Procedures shall apply to any such SOS Arbitration.

**29. COMMUNICATION BETWEEN THE PARTIES AND THE ARBITRATOR:** With the sole exception of the arbitration hearing(s) the parties, their advocates, witnesses, and representatives shall not communicate, either orally, electronically, or in writing, directly with the DMA Arbitrator. All such communications shall be directed to DMA, which if appropriate, will transmit all communications to the Arbitrator.

**29.1** Unauthorized communication with the DMA Arbitrator shall be deemed a violation of this rule and may result in the discharge of the DMA Arbitrator, and re-appointment of a substitute DMA Arbitrator. At the discretion of DMA, the offending party may be imposed a substantial postponement fee and be required to pay other costs resulting from the improper and unauthorized communication. In extreme cases DMA reserves the right to cancel the proceedings and to withdraw as the tribunal pursuant to Section 10. DISCONTINUANCE OF ARBITRATION

**29.2** The DMA Arbitrator is allowed to communicate directly with a party pursuant to the provisions of Section 21.4

**30. COMMUNICATION BETWEEN THE PARTIES AND THE TRIBUNAL:** DMA provides exceptionally fast dispute resolution to those parties who recognize the importance of expediency in such matters. To accomplish this, the parties to the dispute, including the Arbitrator, may be contacted by DMA in writing, by phone, by speaker phone, by conference call, by phone message via a person or machine, by fax, by email, or by any other means or methods. **There is an inherent risk of loss of confidentiality with some of these communication methods. All parties to an Arbitration under these Rules and Procedures shall accept this risk as a consequence of such expedited matters,** and release DMA of all liability pursuant to Section 5 IMMUNITY for any such breach in confidentiality. Loss of confidentiality shall not be grounds for any changes in these Rules and Procedures and shall not affect any Award or timeline.

**30.1** The initial service of notification must be as per section **13.5 SERVICE OF NOTICE.**

**30.2 PARTIES ARE OBLIGATED TO KEEP INFORMED:** Whenever necessary DMA shall attempt to contact the parties; however, **it shall be the sole responsibility of each party to the proceedings to keep in contact with DMA and to keep apprised of what is happening in these expedited matters and when.** In an effort to facilitate this, the parties to the dispute may be provided with DMA "website address" along with a confidential password that will allow only the parties to the dispute, the DMA Arbitrator, and DMA access to the case information and status on the case file over



the internet.

30.3 Verbal notifications will generally be followed by written confirmation sent by first class mail, and/or posting on the DMA website confidential case file page.

30.4 By agreeing to these Rules and Procedures all parties authorize DMA to record any communication, at their discretion.

31. **RECORD KEEPING:** DMA is not a depository or tribunal of records. It shall be the responsibility of the parties to acquire and maintain their own records of the arbitration proceedings; however, once the decision has been rendered, basic file information shall be maintained for one (1) year, or longer if required by law.

31.1 During the actual arbitration hearing, unless otherwise prohibited in the contract, the agreement to arbitrate, or by law, and provided that any recording of the proceedings be solely for the party's own use and kept confidential, the DMA Arbitrator will not prohibit either party from recording the proceedings. Any such recording shall be at the party's sole expense.

31.2 After the time required to maintain the file information has expired, DMA, the DMA Arbitrator, and any representatives of DMA will discard all specific records of each arbitration with the exception of the actual award.

31.3 The DMA Arbitrator may record the hearing by any suitable means for his/her own use while deliberating the matter. Any such recording shall be the sole property of DMA and the DMA Arbitrator, and no party shall be entitled to a copy, or to compel production, and/or inspection of such a recording for any reason.

32. **DISCOVERY:** There is no formal discovery under these Rules and Procedures. **By agreeing to These Rules and Procedures, the parties have waived all rights to discovery, except that which is allowed hereunder, in the parties' agreement to arbitrate, or by law.**

32.1 Each party shall submit their evidence packages at the time of filing their Demand to Arbitrate or their counterclaim as per section 13.3 EVIDENCE PACKAGE. One copy of the evidence package will be provided to the opposing party by DMA.

32.2 Should additional evidence become available between the time the party submits their evidence package and the time the hearing takes place, and the party intends to introduce such new evidence at the hearing, the party must immediately inform DMA of their intent to append to their evidence package.

32.21 If a party presents new witnesses and/or other evidence at the hearing that was not part of the originally submitted evidence package, the DMA Arbitrator shall nevertheless proceed with the hearing. The DMA Arbitrator may, however, keep the hearing open until the opposing party is able to produce evidence in opposition. The DMA Arbitrator may direct that such opposing evidence be delivered to DMA after the hearing, or, at the request of either party, the hearing may be scheduled to reconvene within the next

two (2) days (subject to the availability of the DMA Arbitrator). If the hearing is continued, the cost of the continuance shall be borne by the party(s) causing the delay. At the discretion of the DMA Arbitrator, the hearing may also be continued via telephone conference call with the parties to the dispute.

**32.22** Failure of any party to disclose all evidence and witnesses in their evidence package could result in the hearing being rescheduled or continued. DMA may impose a postponement fee against the party causing the delay.

**33. SUBPOENAS:** DMA provides an expedited dispute resolution process and **there is an inherent risk of having inadequate time to obtain and process a subpoena and all parties to an Arbitration under these Rules and Procedures shall assume this risk as a consequence of expedited matters** and will proceed with their case with or without their witnesses.

**33.1** If certain witnesses or documents are not available to a party, and said witnesses or documents are essential for a full and fair consideration of the dispute, a party may ask for a DMA Arbitrator to issue a subpoena to compel a witness to appear, or for documents to be produced, at the scheduled hearing. Such requests must be made at the time the demand or counterclaim is filed pursuant to Section 13.3 EVIDENCE PACKAGE.

**33.2** Failure of a party to provide their subpoena request along with their evidence package, and subsequent late filing could result in the hearing being rescheduled or continued. DMA may impose a postponement fee against the party causing the delay.

**33.3** If the DMA Arbitrator agrees with the request, a subpoena shall be issued, and signed for by the DMA Arbitrator. The subpoena must be filled out by the party requesting the subpoena, for service according to state law. The requesting party shall be solely responsible for arranging for proper service of the subpoena, according to state law, and shall be responsible for any fees and costs associated with a witness' attendance.

**34. WITNESSES:** The parties are allowed to present witnesses to support their case; however, witnesses are rarely considered necessary parties and a witness' inability to be present at the hearing is seldom grounds to postpone the hearing.

**34.1** At the discretion of the DMA Arbitrator, any witness may be excluded during the testimony of any other witness.

**34.2** It is the sole responsibility of each party to procure their own witnesses and keep them informed of the date and time of the proceedings, and of the location of the hearing(s). The parties shall keep informed pursuant to Section 30.2 PARTIES ARE OBLIGATED TO KEEP INFORMED

**35. EVIDENCE:** The parties may offer evidence that is relevant and material to the issues in

dispute and shall produce such evidence as the DMA Arbitrator deems necessary to achieve a full understanding and determination of the dispute. Evidence presented in the Arbitration is not subject to the restrictions of courtroom rules of evidence. Pursuant to Section 1282.2 paragraph (D) of the Civil Code, “rules of evidence and rules of judicial procedure need not be observed.”

**35.1** All evidence shall be submitted in the presence of the DMA Arbitrator and with all the parties allowed to be present. Parties do not present at the hearing waive their right to be present when evidence is submitted.

**35.2** Unlike litigation, the parties may introduce any evidence they deem relevant to the issues. The DMA Arbitrator shall be the sole judge of the relevance and materiality of the evidence submitted.

**35.21** The parties shall make every effort to keep focused on the relevant facts and to avoid being redundant. The parties shall have the opportunity to “recap” and summarize their presentation in their closing statement. The DMA Arbitrator may disallow or limit repetitious or irrelevant material, evidence, or witnesses.

**35.3 COPIES:** The parties shall make copies of all evidence they intend to submit at the hearing for the DMA Arbitrator and the other parties. The originals shall be made available for examination by the opposing party and the DMA Arbitrator.

**35.4 EVIDENCE BY AFFIDAVIT:** Parties may submit evidence or witness by affidavit, but it shall be given only as much weight as the DMA Arbitrator deems it is entitled to after the consideration of any opposition offered to its admission, as the opposing party is unable to cross-examine.

**36. TECHNICAL INSPECTIONS:** In some cases, Technical Inspections will be necessary for full and fair consideration of the dispute. Any party to the dispute may request, or the DMA Arbitrator may direct, a Technical Inspection of the product, services, or work involved in the dispute.

**36.1 NEUTRAL TECHNICAL ADVISOR:** The DMA Arbitrator may require a Technical Inspection, by a Neutral Technical Advisor, of products, services, or work in dispute. At the request of the DMA Arbitrator, DMA shall procure and appoint a Neutral Technical Advisor. The DMA Arbitrator shall set the date and time of the inspection or test. The Technical Inspection shall be performed as part of the hearing. The parties are encouraged to attend the inspection as it is part of the hearing. Parties who do not attend or appear at the inspection, waive their right to be present. The Neutral Technical Advisors findings shall be submitted in writing or as testimony and shall be part of the hearing. The cost of the Neutral Technical Advisor shall be shared equally by both parties. At the hearing, either party may provide commentary on the qualifications and the findings of the Neutral Technical Advisor.

**36.2 PRIVATE TECHNICAL ADVISOR:** Any party may hire their own Private Technical Advisor. The findings from a Private Technical Advisor hired and paid for by one of the parties shall be submitted in writing or provided as testimony but it shall be given only as much weight as the DMA Arbitrator deems it is entitled to, as both parties may not have been present at the time of inspection and the neutrality of a Private Technical Advisor chosen, hired and paid by one party may be suspect.

**37. CONSTRUCTION CONTRACT INTERPRETATION GUIDELINES:**

**37.1 CONTRADICTION OF TERMS AND CONDITIONS:** The DMA Arbitrator shall be the sole judge of the interpretation of ambiguous and contradictory language in the parties' contract(s) or agreement(s). Whenever possible the following provisions shall prevail.

**37.11** The parties' Arbitration Agreement shall control and have jurisdiction over the parties' contract.

**37.12** These Rules and Procedures shall control and have jurisdiction over both the Arbitration Agreement and the parties' contract.

**37.13** State and federal law shall govern over how the proceedings are allowed to be conducted. The more informal and unconstrained interpretation of the law, which permits the parties the most latitude, shall prevail.

**37.14** When multiple agreements between the parties exist, and some agreements have provisions that others do not, unless a more recent agreement specifically disallows the previous provision(s), or replaces previous provision(s), it shall be determined that the terms and conditions from all the parties' agreements supplement and build upon each other, and all terms and conditions may be considered.

**37.15** If within the parties' agreement there are terms or conditions that are ambiguous or contradictory, the DMA Arbitrator shall endeavor to determine the intent of the parties, and consider each party's understanding of that term or condition at the time they entered into the agreement.

**37.16** When multiple agreements exist between the parties and ambiguous or contradictory provisions become evident when the separate agreements are compared, the terms and conditions of the most recent agreement(s) shall be given greater weight.

**37.17** When contradictory or ambiguous terms appear in a contract, provisions and specifications created and added to the contract specifically for this jobsite shall take precedent, otherwise the more prominent the term or condition appears in the contract, the more weight it shall bear.

**37.18 COMPLETION DATES:** Unless otherwise specified in the parties' agreement, when multiple agreements (contracts, change orders, etc.) exist between the parties, the "**prevailing**" completion date shall be determined by 1) the last contract or change order completion date, or 2) a compilation of all

“working days” from all agreements added up starting from the commencement of the first contract. Lacking clear evidence of the parties’ true intent, the longer time to complete of the two choices shall prevail and set the “**prevailing**” completion date for all agreements. Unless otherwise provided for in the parties’ agreement, as additional contracts or change orders are signed, the completion date for each previous agreement (contracts, change orders, etc.) between the parties shall be changed to the new “**prevailing**” completion date.

**37.19** The DMA Arbitrator shall follow the provisions set forth in Sections 37.4 - 37.8 unless such adherence would render a highly unfair or unreasonable decision.

**37.2** **INDUSTRY STANDARDS:** The determination of what is "workmanlike and substantial" and the meaning for the term "**Industry Standards**" shall be left solely to the discretion of each DMA Arbitrator. Industry standards may be different for residential, commercial, or industrial, and Industry standards may be different for custom, high-end, "spec." building, or tract building. Contractors provide varying qualities of work, and parties must have reasonable expectations.

**37.3** **INEFFECTUAL REPAIRS:** Often related to water infiltration issues, the following provisions shall pertain to repairs or work performed when the source of the problem is unknown or uncertain at the time the parties entered into their agreement.

**37.31** **GUARANTEES:** It is the responsibility of the party paying for repair work to secure a signed **guarantee** from the party performing the work, that proclaims that the proposed work is **guaranteed** to correct the problem.

**37.32** **DISCLAIMERS:** It is the responsibility of the party performing the work to have the paying party sign a **disclaimer** that states that the proposed repair work may not correct the problem, and the paying party agrees to pay for the *effort* regardless of outcome.

**37.33** The DMA Arbitrator, however, shall not base his/her decision solely on such **Guarantee** or **Disclaimer**, and in the absence of a **Guarantee** or **Disclaimer**, it shall be up to the DMA Arbitrator to determine what is fair and reasonable based on the facts presented.

**38.** **POST HEARING ADMISSION OF EVIDENCE:** In the event the DMA Arbitrator directs that evidence be submitted after the hearing, such evidence shall be submitted to DMA for delivery or transmittal to the DMA Arbitrator. The hearing shall remain "open" until such a time as the post hearing evidence is received and reviewed by the DMA Arbitrator, or the time allotted by the DMA Arbitrator to produce such post hearing evidence has expired. DMA shall provide all parties the opportunity to examine such documents and evidence.

39. **UNSOLICITED POST HEARING SUBMISSION OF EVIDENCE:** Once the hearing has been closed, but before the decision has been rendered, a party may submit evidence that was impossible to present at the hearing and ask that it be considered. The DMA Arbitrator shall decide whether the new evidence will be allowed. If allowed, DMA shall provide copies to the opposing party for their consideration and response. DMA will deliver or transmit the new evidence and any responses to the DMA Arbitrator. After the DMA Arbitrator has rendered the decision, no arguments or evidence may be presented even if newly discovered or unavailable at the time of the hearing. Any evidence not allowed by the DMA Arbitrator or submitted after the decision has been rendered will be returned to the party.

40. **ALLOWABLE RESEARCH:** Upon notice to the parties and provided the confidentiality of the proceedings is maintained, the DMA Arbitrator may, in his/her sole discretion, in the absence of enough sufficient information provided at the hearing, conduct independent research during the hearing in an effort to determine and provide the most accurate and equitable amount for the Award (e.g. contact a material supplier for a current price check).

40.1 **RESEARCH AFTER THE HEARING IS CLOSED:** After the hearing is closed, the DMA Arbitrator shall determine the responsibility of each party based on the evidence presented and discovered at the Arbitration hearing. However, after the DMA Arbitrator has determined responsibility, they may independently research costs pursuant to these Rules and Procedures, before rendering his/her decision.

40.2 **USE OF DICTIONARY:** The DMA Arbitrator during or after the hearing may use a Webster's Dictionary published within 10 years of the date of the hearing.

41. **SCOPE OF THE DECISION:** The decision may order a party to pay money, or not to pay money, to perform work, to re-perform work, or not to perform work, or any combination thereof. The decision may order the cancellation of the contract, or that the contract be completed. The decision may order payments to be made as work is completed, or a lump sum payment upon completion, or payments after completion. The decision may provide that the prevailing party receive all or part of their claim, or the decision may be one in which the DMA Arbitrator feels that fairness requires no payment or performance of work at all. The decision may be one where both parties partially prevail, and one is ordered to perform work and the other is ordered to pay. The decision shall be one that is:

41.1 Considered **fair and reasonable** by the DMA Arbitrator, and is

41.2 **Based on the facts** presented and discovered by all the parties that participated, and

41.3 **Falls within the scope of the claim** or remedy sought as characterized by the prevailing party in their demand to arbitrate, counterclaim, or submission to arbitration, and is

41.4 **In accordance with the provisions and limitation** presented in these Rules and Procedures, and

41.5 **In accordance with any award limitations** that may be present in the parties'

contract and/or arbitration agreement, and

- 41.6 **Possible and feasible.** When the decision mandates work to be performed, it must be possible and feasible to perform the work ordered and possible and feasible to perform the work in the time allotted.

42. **TYPES OF DECISIONS:**

- 42.1 **INTERIM DECISION:** When a decision requires a party to perform work, an interim decision may be written, whereby the DMA Arbitrator retains continuing jurisdiction and authority over the execution of the work, required in that decision, until the work has been performed to the satisfaction of the DMA Arbitrator. The time allotted by the DMA Arbitrator in the interim decision to complete work shall include additional time for contingencies.
- 42.2 **FINAL DECISION:** Once a final decision has been rendered, the DMA Arbitrator no longer has authority over the decision unless a valid request for correction, clarification, or statement of impossibility to perform, or impossibility to perform in a timely manner is received by DMA.

43. **REQUEST FOR CLARIFICATION OR CORRECTION OF AN AWARD:**

- 43.1 **REQUEST FOR CLARIFICATION:** If a party does not understand the terms of the DMA Arbitrator's decision, or what is required for compliance with the decision, the party must immediately inform, in writing, and request clarification.
- 43.2 **REQUEST FOR CORRECTION:** If a party feels that the decision contains a mistake of fact, miscalculation, or exceeds the DMA Arbitrator's authority, a party may, in writing, immediately ask DMA to correct the award. Requests of Correction shall be governed in the manner prescribed by the California Code of Civil Procedure § 1284. Any such written Requests For Correction must be received by DMA within ten (10) days of the date the decision is rendered, or within the time period allowed by law.
- 43.3 **Requests for Clarification or Requests for Correction** which only reargue the party's position, or simply disagree with the DMA Arbitrator's, need not be submitted as they will be summarily rejected by DMA and returned. The DMA Arbitrator may only clarify the intent of the decision or correct a mistake. The objective and intention of the decision cannot be changed.
- 43.4 Copies of Requests for Clarification or Requests for Correction received by DMA will be delivered or transmitted to the opposing party(s), and to the DMA Arbitrator. If the request is sufficient to be considered, the opposing party(s) shall be provided an opportunity to respond to the Request, at which time the DMA Arbitrator shall clarify the award, and/or correct, or decline to correct or clarify, the award.

44. **IMPOSSIBILITY TO COMPLY STATEMENT:**

- 44.1 If a party is ordered to perform work as part of an award, and that party feels that the decision is impossible to perform or impossible to perform in the time allotted, the party may, in writing, immediately submit an "Impossibility to Comply Statement" to DMA. The Impossibility to Comply Statement must be submitted within the time allotted to perform the work. Impossibility to Comply Statements received after the time allotted has expired will be summarily rejected by DMA and returned.
- 44.2 Copies of the Impossibility to Comply Statement received by DMA will be delivered or transmitted to the opposing party(s), and to the DMA Arbitrator. The opposing party(s) shall be provided an opportunity to respond to the statement, then the DMA Arbitrator may:
- 44.21 Request additional evidence, and/or
  - 44.22 Schedule a supplemental expedited hearing and/or
  - 44.23 Take any other action as deemed appropriate by the DMA Arbitrator to determine the validity of the parties' assertion that the decision is impossible to execute.
- 44.3 If the DMA Arbitrator confirms the impossibility, the DMA Arbitrator may amend the decision. Such an amendment must fall within the scope of the authority of the DMA Arbitrator pursuant to these Rules and Procedures and shall be modified in a way that it remains as similar to the original as feasible.
- 44.4 The parties shall pay for the costs of the supplemental hearing pursuant to the Fee Schedule. However, depending on the circumstances that lead to an Impossibility to Comply, the parties may be responsible for the costs of a supplemental expedited hearing, or in certain circumstances, DMA may offer to pay for the supplemental hearing, or a portion thereof. Responsibility of payment of such additional hearing costs shall be determined solely by DMA.
45. **SUSPENSION OF TIME TO PERFORM:** If a party is ordered to perform work and files a Request for Clarification or Request for Correction or Impossibility to Comply Statement, the time allocated to complete the work by the DMA Arbitrator in the decision, shall be postponed an equal number of days from the time the Request is submitted to DMA and the time the DMA Arbitrator or DMA determines the issue, and rules on the Request.
46. **RIGHTS AND RESPONSIBILITIES AFTER THE DECISION IS RENDERED:**
- 46.1 Once an Award has been issued, the parties are legally bound to abide by the decision and must comply with all of its terms. The award is subject to modification or correction only under these Rules and Procedures or to any limited right of review available under state or federal law.
  - 46.2 **Each party relinquishes any right to sue the other party in a court of law on any claim that falls within the scope of the arbitration hearing.** In accordance with the



California Code of Civil Procedure, a party may petition a court of law to enforce, correct, or vacate an arbitration award.

47. **NO RIGHT TO APPEAL:** BY AGREEING TO NEUTRAL, BINDING ARBITRATION ALL PARTIES TO THE DISPUTE HAVE GIVEN UP THEIR JUDICIAL RIGHTS TO APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION OF THEIR CONTRACT.
  
48. **EVALUATIONS:** In an effort to continually improve DMA service, after the conclusion of every Hearing, all parties to the arbitration agree to fill out an evaluation form briefly describing their arbitration experience with DMA, and to evaluate the DMA Arbitrator prior to receiving the decision. All evaluations shall become the sole property of DMA, and no party shall be entitled to a copy, or to compel production, and/or inspection of such a record or report for any reason.
  
49. **OBSERVERS ATTENDING HEARINGS:** Only those persons with a direct interest in the arbitration shall be entitled to attend the hearing(s), with the sole exception of allowable observers. In an effort to continually improve DMA service, the following provisions for allowable observers shall be followed:
  - 49.1 DMA personnel and/or panel members may attend any hearing for observation purposes.
  - 49.2 As part of his/her certification program all DMA Arbitrators are required to attend and to observe several actual hearings before they receive his/her Arbitrators Certificate. DMA and all parties to any dispute under these Rules and Procedures shall allow such certification program observer(s) to observe any hearing, but not more than three (3) at a time at any hearing.
  - 49.3 The observers shall not affect the outcome of any DMA Arbitrator's decision in any way. All observers shall be bound by the same confidentiality agreement as the DMA Arbitrator. Any record or report created by any observer shall become the sole property of DMA, and no party shall be entitled to a copy, or to compel production, and/or inspection of such a record or report for any reason.
  
50. **UN-AVAILABILITY OF DMA:** DMA their Arbitrators, and representatives will endeavor to meet the timelines prescribed herein, but DMA provides no guarantee that DMA or the DMA Arbitrators will be ready or available at the times prescribed herein in such expedited matters. DMA will endeavor to keep as close to the prescribed timetable as is reasonably possible.
  
51. **SIGNAGE & ADVERTISING:** When the parties contract calls for their disputes to be resolved by DMA, or under the rules and procedures of DMA, or the parties sign a separate agreement to have DMA resolve their dispute, the parties thereby authorize DMA to place a jobsite sign at the parties' jobsite (i.e. NO PROBLEMS HERE Construction disputes avoided and resolved

by DMA Dispute Management & Avoidance).

52. **PARTIAL INVALIDITY:** If any provision of these Rules and Procedure or any provision of parties' agreement to arbitrate or the parties' contract is held by an arbitrator (or by a court of competent jurisdiction) to be invalid, void, or unenforceable, the remaining provisions of the agreement shall nevertheless continue in full force without being impaired or invalidated in any way. Should an arbitrator (or a court of competent jurisdiction) determine that any portion of the parties' agreement to arbitrate or contract violates any law, then the agreement or contract shall not be void, rather shall be modified, in order that it remain as similar to the original as possible and still comply with the relevant law allegedly violated.

## TERMS & DEFINITIONS

- Appeal** – Not generally allowed in Arbitration, a litigation term used to describe the process of filing a request or demand that a case be re-tried or re-proved in a superior court.
- ADR - Alternative Dispute Resolution** – Various methods used to resolve a dispute without resorting to civil litigation. The methods include negotiation, mediation, arbitration, dispute review boards, and binding arbitration.
- Advocate** – One who pleads the cause for another. Attorney, defender, ally, adviser, or any other individual that a party mandates to act on their behalf.
- Affidavit** – A sworn statement in writing, especially under oath or on affirmation before an authorized magistrate or officer.
- Agreement** – The written form of a parties' contract, signed by the parties.
- Allowance** – An amount chosen that may not be representative of the actual amount required to perform the task or purchase the material.
- Arbitration** – The private, confidential, and voluntary process where individuals, groups, companies, organizations, or other entities, authorize their dispute to be heard and decided by a neutral Arbitrator or panel of Arbitrators to render a decision. The process is less formal, allowing the parties to represent themselves.
- Arbitration Agreement** – The private agreement of individuals, groups, companies, organizations, or other entities, to have their dispute decided by a neutral Arbitrator instead of publicly litigating in a court of law. The arbitration agreement must exist prior to the commencement of any arbitration proceedings. The arbitration agreement must be voluntary and freely entered.
- Arbitrator** – The individual, chosen and authorized by the parties to a dispute, to settle their dispute and render a decision privately and confidentially.
- Award** – The decision rendered by the Arbitrator. Similar to a “judgment” in litigation.
- Claim** – The compensation, restitution, settlement terms, or reimbursement for damages asked for by a party to a dispute.
- Claimant** – The party initiating the arbitration process.

- Coalition Panel** - A group of Arbitrators working in concert and cooperation with equal vote towards rendering a decision in an arbitration case.
- Contract** – The written form of a parties’ agreement, signed by the parties.
- Counterclaim** – The name of the claim filed by the respondent.
- Cross-examine** – The process where the opposing party produces evidence, or a series of questions designed to check or discredit the parties’ evidence or the parties’ answers to previous questions.
- Decision** – The determination made by the Arbitrator in written form, signed by the Arbitrator(s). Similar to a “verdict” in litigation.
- Demand to Arbitrate** – The initiating parties' mandate to start Arbitration proceedings pursuant to their arbitration agreement. The “Demand to Arbitrate” form establishes the complaint and the relief requested or remedy sought.
- Discovery** – Not allowed in Arbitration unless it is specifically called out as "allowable discovery" in the parties’ contract. Discovery is the term used to describe a process allowing a party or their advocate to depose witnesses to ascertain the worthiness of the opposing parties case, and to enhance their own. Generally, a very time consuming and expensive process of litigation.
- DMA Arbitrator** – An experienced licensed professional, expert in his/her field, who is also a trained and certified arbitrator, providing neutral expedited binding arbitration.
- DRB - Dispute Review Board** – A panel of Arbitrators working in concert to settle disputes as they occur, and often where they occur, pursuant to an arbitration agreement when the agreement specifies such a course of action. Generally binding and enforceable.
- EE Arbitration** – Ensuing Expedited Arbitration is the mandatory transfer of an OS Arbitration to the rules of Expedited Arbitration, which occurs when any party to the OS Hearing file for a Stay of the OS Hearing.
- EE Hearing** – Ensuing Expedited Hearing is the hearing following a Stay of a OS hearing.
- Expedited Arbitration** – The arbitration process condensed into a fast, efficient, and cost-effective timeline.
- Evidence Packet** – The packet containing all the plans, specifications, contracts, documents, and other evidence that supports your claim.

- Litigation –** A contest in a court of law for the purpose of enforcing a right or seeking a remedy.
- Mediation –** The process by which a disinterested third party assists the parties to a dispute in reaching a mutually acceptable settlement. Usually non-binding & unenforceable.
- Mediator –** The disinterested third party who is chosen by the parties, or appointed, to assist the parties to a dispute in reaching a mutually acceptable settlement.
- Miscalculation of figures –** A mathematical error.
- Mistake of Fact –** A true error of such things as dates, times places or names, not a conclusion of the Arbitrator with which the party disagrees.
- Negotiation –** Mutual discussion and arrangement of terms towards a settlement agreeable to one or more parties.
- Neutral –** Impartial, unbiased, detached, and unprejudiced
- OS Arbitration –** On-Site Arbitration is Expedited arbitration further condensed in respect to the timeline. OS Arbitration happens immediately after the dispute arises, and the hearing held where the dispute arises (at the jobsite) whenever possible.
- OS Arbitrator –** The Arbitrator presiding over an OS Arbitration. One of the Arbitrators on a "Dispute Review Board" where the "Board" contains one (or more) Arbitrator(s).
- Party –** Any entity whether it be a person, couple, partnership, group, company, organization, or otherwise. In arbitration, the "parties" to a dispute are those who have a recognizable interest in the outcome.
- Request of Clarification Form –** The form filed by a party to an arbitration asking the Arbitrator to clarify a decision or award that is ambiguous or uncertain as to what action is required.
- Request of Correction Form –** The form filed by a party to an arbitration asking the Arbitrator to correct a mistake of fact or a miscalculation of figures that appears on the face of the decision or award.
- Respondent –** The party to the dispute who doesn't initiate the arbitration process but is initially filed against. The party to a dispute who "responds" to the claimant's demand to arbitrate.

**Response to a “Demand to Arbitrate”** – The Respondents written answer to the claimants “Demand to Arbitrate.” The response may declare a general denial, a denial of specific issues, or may set forth a counterclaim.

**Rules and Procedures** – The prevailing DMA rules and procedures in effect at the time of any DMA proceeding.

**Service** – Physically providing written documentation or notification to any party to a dispute.

**Settlement** - Voluntary resolution of a dispute by a mutually acceptable agreement among parties; Not mandated by a neutral individual. Available to the parties at any time up until the hearing is closed.

**SOS Arbitration** – Subsequent On Site Arbitration is an arbitration process initiated by the prevailing party to a previous OS Hearing Award, when the award was for a direction of work, and that work was not done, not done satisfactorily, or not done in the time allotted.

**SOS Hearing** – Subsequent On Site Hearing is the hearing to (re)examine alleged non-compliance with an award to perform work, in an effort to transfer that decision to a monetary award.

**Submission to Arbitrate** – The mutual joint filing for Arbitration.

**Their** – Hers, His, Its, His/Hers, or His/Hers/Its

**They** – She, He, Its, He/She, or He/She/Its

**Tribunal** – A forum of Justice.

**Website** – [trustDMA.com](http://trustDMA.com)