# Dispute Review Board Agreement

*Note to Specifiers: This generic agreement may not be entirely applicable or enforceable in certain jurisdictions.*

#### **Dispute Review Board Agreement**

## PARTIES

* 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”).
  2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Contractor”).

1.3 Dispute Review Board (“DRB”) consisting of three members, one of whom shall serve as Chair of the DRB as designated by the Parties:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Chair)
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## CONTRACT

* 1. The Contractor has entered into a contract dated [XX] (“Contract”) with the Owner for the construction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Project Name] (“Project”).
  2. Section [XX] of the Contract (hereinafter referred to as “DRB Specification”) is incorporated by reference into this Agreement, and the Owner, the Contractor, and the DRB shall be bound to the duties and responsibilities set forth therein.

## PURPOSE OF DRB

Engage in dispute avoidance activities, which include fostering and conducting proactive discussion on project issues via attending DRB regular meetings, participating in site visits, and giving advisory opinions (if requested by both the Owner and the Contractor). Engage in dispute resolution activities, which include issuing timely and impartial recommendations for resolution of disputes by a DRB hearing process.

## DRB SCOPE OF WORK

* 1. General:
     1. Stay abreast of Project developments and potential or existing disputes by means of periodic meetings, site visits, job document reviews, and other means as agreed by the Parties.
     2. Examine site conditions or specific construction features relating to potential or existing disputes, unless such examination is not practical or would result in a delay to the Project.
  2. Establish DRB Operating Procedures that supplement and are consistent with the requirements and general guidelines set forth in the DRB Specification. 
     1. Dispute Avoidance Activities:
        1. Commit to be reasonably available and to avoid conflicts with other commitments on days scheduled for DRB regular meetings and site visits.
        2. Prepare agendas for and summaries of DRB regular meetings.
        3. Review project documents provided in between or in advance of meetings.
        4. Provide advisory opinions as requested by both the Owner and the Contractor.
  3. Dispute Resolution Activities:
     1. Upon receipt by the DRB of a dispute referral from either the Owner or Contractor, plan, schedule and conduct a DRB hearing process in the manner, timing, and location set by the DRB, in consultation with the Owner and the Contractor.
     2. Convene internal meetings as needed to review and discuss the dispute, and to formulate the report.
     3. Following each hearing and DRB deliberation, issue timely written reports to the Owner and the Contractor, including the supporting analysis and rationale for all recommendations.
     4. When requested and deemed appropriate by the DRB, provide timely written responses to requests for clarification made by either the Owner or the Contractor
     5. Perform any other DRB services needed to achieve the purpose of this Agreement.

## RESPONSIBILITIES OF THE PARTIES

* 1. DRB Responsibilities:
     1. Maintain impartiality and avoid conflicts of interest by continuing to meet the eligibility and disclosure requirements for DRB members, as set forth in the DRB Specification. Promptly advise all Parties upon becoming aware of any development that could be perceived as a conflict of interest and promptly resolve any such issues.
     2. Advise the other DRB members and the Owner and the Contractor when unable to continue serving as a DRB member.
     3. Neither the DRB Members individually, nor the DRB collectively shall:
        1. Give advice regarding design or construction means or methods.
        2. Discuss, individually or collectively, issues with the Owner or the Contractor, such as the conduct of the work and the resolution of construction problems, that could possibly be construed as compromising the DRB’s ability to impartially resolve future disputes.
        3. Express an individual or collective opinion of merit, in whole or in part, for any potential or other dispute at any time prior to the issuance of a report, except in the case of an advisory opinion.
        4. Meet or communicate with either the Owner or the Contractor in the absence of the other, except as required when performing the duties of the Chair or conducting a meeting or hearing which the Owner or Contractor refuses to attend.
     4. Consider the facts and circumstances forming the basis of a referred dispute impartially and independently, and evaluate the merits based on careful consideration of the information submitted by the Parties, all Contract requirements, and applicable law/regulations. The DRB shall not:
        1. Undermine the provisions of the Contract, disregard or alter any requirements of the Contract, or alter the allocation of risk specified therein.
        2. Supplant or otherwise interfere with the respective rights, authority, duties, and obligations of either the Owner or Contractor as set forth in the Contract or Contract Documents, as defined in the Contract.
        3. Participate in negotiations with the Owner and Contractor, nor perform conciliation or mediation services in connection with any issue or dispute.
     5. Make every effort to reach unanimous recommendations. If this cannot be accomplished, include written minority recommendations and supporting rationale within the full DRB report, but do not identify the dissenting member.
     6. DRB members individually, and the DRB collectively, agree to be bound by the DRB Foundation Code of Ethical Conduct as set forth in the current edition of the DRBF *Dispute Board Manual: A Guide to Best Practices and Procedures*.
  2. Owner Responsibilities:
     1. Except for participation in the DRB’s activities as provided in the DRB Specification and this Agreement, do not solicit advice or consultation from the DRB or individual DRB members on matters dealing with the conduct of the work or resolution of problems.
     2. Furnish to each DRB member one copy of the conformed Contract (including all Contract Documents), the baseline schedule and agreed updates, Contract amendments, and other documents pertinent to the performance of the Contract and necessary for the DRB to conduct its operations.
     3. Coordinate DRB operations in cooperation with the Contractor.
     4. Arrange for or provide facilities at or near the site for periodic meetings, and provide any necessary support services.
     5. Cooperate with the Contractor and the DRB to encourage avoidance of disputes and facilitate timely resolution of disputes.
  3. Contractor Responsibilities:
     1. Except for participation in the DRB’s activities as provided in the Contract and this Agreement, do not solicit advice or consultation from the DRB or individual DRB members on matters dealing with the conduct of the work or resolution of problems.
     2. Furnish to each DRB member and to the Owner one copy of pertinent documents, other than those furnished by the Owner, as may be requested.
     3. Cooperate with the Owner and the DRB to encourage avoidance of disputes and facilitate timely resolution of disputes.

## TIME FOR BEGINNING AND COMPLETION OF DRB ACTIVITIES

* 1. Unless the DRB Chair has been identified by the Parties, the DRB shall begin its activities by selecting the Chair. After selection of the Chair, DRB activities shall proceed with preparation for the DRB kick-off meeting, including preparation of the DRB Operating Procedures.
  2. This Agreement shall survive the termination, resignation or death of any DRB member.
  3. The DRB’s jurisdiction under this Agreement shall terminate on the date of final payment under the Contract, unless terminated earlier by mutual agreement of the Owner and the Contractor.
  4. Individual DRB members may be terminated by mutual agreement of the Owner and Contractor, as provided in Section [XX] of the DRB Specification. If during the course of the DRB’s tenure the Owner and/or the Contractor has any issues or concerns with one or more members of the DRB, the requesting Party shall confer with the other Party and, as needed, with the DRB to address any such issues or concerns to endeavor to avoid termination.
  5. In the event a DRB member is terminated, the member shall be compensated for services performed up to the effective date of the termination.
  6. In the event a DRB member resigns, the member shall give the Parties at least thirty (30) days written notice to both Parties; shall be compensated for services up to the effective date of the resignation; and shall cooperate with the Owner and the Contractor in transitioning off the DRB.

## PAYMENT

* 1. Payments made to the DRB members shall constitute full compensation for work performed, travel time, services rendered, and for all materials, supplies and incidentals necessary to serve on the DRB.
  2. Payment for services rendered by DRB members shall be at the individual rate and conditions agreed to with each DRB member.
  3. DRB members shall be reimbursed for actual direct, non-fee expenses, subject to limitations imposed by the Parties.
  4. Payment made to DRB members in the form of bonus, commission, or consideration of any nature other than that specified hereinabove for performance and service provided under this Agreement, before, during or after the period that this Agreement is in effect, is prohibited.
  5. DRB members shall individually submit invoices for work completed to the Contractor:
     1. Not more often than once per month.
     2. Based on the agreed billing rates and conditions and on the number of hours expended, together with direct, non-fee expenses as permitted by any applicable reimbursement limitations (including an itemized listing supported by copies of original bills, invoices, and expense accounts).
     3. Accompanied by a description of activities performed daily during the invoice period.
  6. The Contractor shall pay acceptable invoices within thirty (30) days of their receipt.
  7. The Contractor shall be reimbursed for the Owner’s portion of the DRB costs in accordance with payment provisions specified in the Contract.

## CONFIDENTIALITY AND RECORDKEEPING

* 1. No DRB member shall divulge information that has been acquired during DRB activities without obtaining prior written approval from the Owner and the Contractor.
  2. DRB members shall maintain cost records pertaining to this Agreement for inspection by the Owner or the Contractor for a period of [X] years following termination of this Agreement.

*Note to Specifiers: Insert number of years of the Project jurisdiction’s record retention requirement.*

## ASSIGNMENT

No Party to this Agreement shall assign any duty established under this Agreement.

## TERMINATION

* 1. This Agreement may be terminated by mutual agreement of the Owner and Contractor at any time upon not less than thirty (30) days written notice to the DRB.
  2. If a DRB member resigns, is unable to serve, or is terminated, the member shall be replaced within thirty (30) days in the same manner the member was originally selected. This Agreement shall be amended to indicate the member replacement.

## LEGAL RELATIONS

* 1. The Parties to this Agreement expressly acknowledge that each DRB member, in the performance of their duties on the DRB, is acting in the capacity of an independent agent and not as an employee of the Owner or the Contractor.
  2. The Owner and the Contractor acknowledge that each DRB member is acting in a capacity intended to assist the Parties in avoiding disputes or facilitating the timely resolution of disputes. Accordingly, it is agreed and acknowledged that, to the fullest extent permitted by law, each DRB member shall be accorded quasi-judicial immunity for any actions or recommendations associated with DRB activities.
  3. To the fullest extent permitted by law, the Owner and the Contractor shall indemnify and hold harmless each DRB member from (i) any personal or professional liability arising from or related to DRB activities under this Agreement, and (ii) any claims, losses, demands, costs, and damages (including reasonable attorney fees) for bodily injury, property damage, or economic loss arising out of or related to DRB members carrying out DRB activities under this Agreement. The foregoing indemnity and hold harmless agreement is a joint and several obligation.

## DISPUTES REGARDING THIS AGREEMENT

* 1. Disputes among the Parties arising out of this Agreement that cannot be resolved by negotiation, and actions to enforce any right or obligation under this Agreement, shall be initiated in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Court Name] Court of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Jurisdiction].
  2. All questions shall be resolved by application of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Jurisdiction] law, without reference to the jurisdiction’s choice of law rules.
  3. The DRB members hereby consent to the personal jurisdiction of the Court of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Jurisdiction].

## FUNDING AGENCY REVIEW

The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Agency funding the Project] has the right to attend DRB regular meetings, review DRB reports, and attend DRB hearings, but not to attend private DRB deliberations.

## DRB AGREEMENT EFFECTIVE DATE

This Agreement shall be effective as of the following date: [Insert date DRB was appointed]:

DRB MEMBERS

By:

(Signature) (Name)

By:

(Signature) (Name)

By:

(Signature) (Name)

Contractor Owner

By: By:

(Signature) (Signature)

By: By:

(Name) (Name)

Title: Title: