

ConSiteSolutions

**User's Manual for
the Initial Decision
Maker Process**

On November 5, 2007, the American Institute of Architects (AIA) released its 2007 version of Standard Form A201, which contains the AIA's General Conditions of the Contract for Construction. The new General Conditions has several major changes, one of which is a new dispute resolution provision in which the role of the 'initial decision maker' (IDM) is established. The purpose of the IDM position is to address historically negative feedback from contractors throughout the construction industry due to the fact that the new General Conditions's predecessor sent such disputes arising on construction sites directly to the Architect. Because the Architect was paid directly by the project's owner, contractors thought there to be an inherent bias; to wit, that the architect was financially aligned with the owner and had a close relationship with same that would preclude a truly neutral and impartial conflict resolution. Further, many contractors also believed that architects could not impartially resolve disputes involving allegations of defective design documents or that the architect failed to adequately respond to contractor requests and inquiries in a timely manner during construction of the project.

The 2007 A201 Standard Form

The New General Conditions establish the IDM, its role and the decision making procedures as follows:

15.2 INITIAL DECISION

15.1.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9., and 11.3.10 shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation

of any Claim arising prior to the date of final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or

supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and(3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

While the role of the IDM, an independent third party, is positive in theory, the AIA's new provision is fraught with controversy and confusion. Enter ConSiteSolutions, a dispute resolution service provider that will ensure the delivery of comprehensive, project specific decision-making through the supply of the IDM. While the AIA's concept of the IDM is certainly a step in the right direction and, in theory, allows for the continuation of a project without disruption of the critical path of the project, the form document does not address the nature and scope of the IDM's undertaking. There are several questions that must be addressed for the successful incorporation of this dispute resolution provision into the contract documents. Specifically, the following issues must be discussed:

- Who is the IDM and what are his/her qualifications?
- What standard of care applies to the IDM?
- Is the IDM bound by any ethical standards or rules?
- Is the IDM required to be a design professional, general contractor, lawyer or scientist?
- What guidelines must exist to ensure the IDM's neutrality?
- Who pays for the services of the IDM and how?
- Will the IDM be covered by insurance? Will the IDM have liability protection for his/her decisions?

Addressing Confusion in the Article 15 Dispute Resolution Provisions

The IDM's authority is limited to claims arising prior to the date of final payment. Once final payment is made, the parties are not obligated to follow the IDM procedures prior to

engaging in mediation, arbitration or litigation. This is cut and dry. However, the initial IDM proceedings are unclear and, to an extent, arbitrary.

The new General Conditions mandate that the IDM issues an initial decision as a condition precedent to mediation. However, the document also allows the IDM not to render a decision at all. In fact, prior to rendering its initial written decision, the IDM has ten ways to

- (1) Request materials from the claimant or a response with supporting data from the other party,
- (2) Reject the claim in whole or in part,
- (3) Approve the claim in whole or in part,
- (4) Suggest a compromise, or
- (5) Advise the parties that the IDM lacks sufficient information to evaluate the merits of the claim or that the IDM concludes, in his or her sole discretion, that it would be inappropriate to resolve the claim.

By allowing the IDM to avoid rendering an initial decision, it negates the objective of this method of on-project dispute resolution. It affords the IDM an out for potentially arbitrary reasons. Ultimately, the procedures established by the form contract have no teeth. It provides for an extra expense (the expense of retaining an initial decision maker) on the project but does not, under any circumstances, require the IDM to render a decision. ConSiteSolutions will not allow its IDM to arbitrarily decide to not render a decision. Failure to render a decision is not only contrary to the intent of the IDM but will inevitably cause delays in the path of the project and, consequently, raise expenses to the players in the construction process.

Since the standard form General Conditions state that submission to the IDM is a condition precedent to mediation and, consequently, arbitration or litigation, this poses the question of whether, pursuant to Article 15.2, the IDM's decision to not make a decision meets the condition precedent to mediation. With our service, this is a non-issue. SiteConSolutions will provide the following procedures and will provide an amended Article 15 for incorporation into the clients' contract. First, submission of a conflict to the IDM will remain a condition precedent to mediation. Accordingly, if the parties bringing the grievance fail to timely comply with the submission requirements to the IDM, same will waive its contractual right to mediation for failure to meet a condition precedent.

The IDM will be available for dispute resolution procedures for up to 30 days after substantial completion of the project subject to the contract. This will afford the IDM's availability to preside over disputes regarding punch list items and final change orders.

The IDM will have the following options when presented with a conflict:

- (1) Request materials from the claimant or a response with supporting data from the other party within three days of conflict submission. This will accelerate the process and address disputes quickly and efficiently so as to not disrupt the path of the project,
- (2) Reject the claim in whole or in part after thorough review of the claims and supporting documentation of necessary,
- (3) Approve the claim in whole or in part after thorough review of the claims and supporting documentation of necessary,
- (4) If the parties fail to reach an agreement on their own with respect to the conflict, the IDM, with the assistance of any consultant or experts in the subject matter around which

the dispute is centered, may render an equitable decision which neither grants in full or denies in full the original petition.

(5) The IDM will not render any legal decisions as to liability of the parties for breach of contract or tort claims since the IDM is not an adjudicator of legal liability claims.

Once again, ConSiteSolutions' project dedicated IDMs will render a decision. This poses the question, however, of how the conflict arises and is sent to the IDM.

Submitting the Claim to the IDM

A problem arises on the jobsite. There is an owner caused delay, a force majeure or an ambiguity in the plans and specifications. The contractor needs a \$700,000 change order. The owner doesn't want to agree to an increase in contract price or an extension of time in which the work must be performed.

Enter the IDM

While the new General Conditions establish guidelines and soft deadlines for the submission of claims, ConSiteSolutions believes that the process, if governed by the AIA's terms, will take too much time. It is well known throughout the construction industry that a delay on the project can cost the players involved therewith millions of dollars. Delays in the project have a domino effect. One delay will trigger a series of other delays, flowing from the owner/contractor disagreement. Subcontractors, laborers and suppliers may experience losses. The property may be subject to a statutory lien.

To address the need for efficiency and time sensitive management of concerns, ConSiteSolutions will establish an accelerated, on-site dispute resolution system. When a claim

arises, the following steps, which will be incorporated into the contract, will control the procedure:

- 1) The party instituting the IDM process will fill out a preliminary Request for Initial Decision and submit it to the ConSiteSolutions. ConSiteSolutions will provide this form. A copy of this form is attached hereto as Document A1. The party instituting the process will deliver the document directly to ConSiteSolutions.
- 2) Within 24 hours, the IDM will well review the A1 Document and request all supporting documentation and reports that he/she deems necessary and proper. The IDM will request a response from both parties – allowing the party who did not initiate contact with the IDM time to file a written response with supporting documentation and reports. Submittals must be in the possession of the IDM and delivered either by hand or electronically within 48 hours. The parties may agree to extend this time frame by mutual agreement.
- 3) Once the IDM receives documentation from both parties, s/he will immediately set a time and date for a resolution meeting. This meeting must take place within 24 hours. The IDM has the discretion as to how long the meeting will last depending on the complexity of the dispute at hand.
- 4) The meeting will take place either at ConSiteSolutions or on-site. The IDM has the discretion to request a mutual walk-through of the project before or during the meeting. All parties involved will have the opportunity to have representation at the walk-through.
- 5) The IDM will have the opportunity to privately caucus with the parties after submission of Document A1. The IDM will disclose that private communication took place to each party but will keep confidential the substance of same.

- 6) The IDM will ensure that a representative of each party who has the authority to make binding agreements on behalf of his/her company is present.
- 7) At the initial hearing, the form of the meeting (i.e. who speaks first, whether parties will be privately caucused) will be left to the discretion of the IDM.
- 8) At the conclusion of the meeting, there are several different possible outcomes:
 - a. The IDM will make a decision either granting in full or in party or denying in full or in part the petitioner's claim. In the event this is the case, the IDM will record the decision on Document A2, a copy of which is attached hereto. Document A2 will contain a description of the dispute and the IDM's decision. The parties will sign the document as an acknowledgement that the condition precedent to formal mediation, if necessary, has been fulfilled. The parties' signatures do not constitute a settlement agreement or a waiver of rights to mediate, arbitrate or litigate. The A2 will be distributed to all parties involved and will set forth the exact change of contract sum, extension of time or document clarification.
 - b. The IDM will allow the parties to come to a mutual agreement which, upon ratification, will act as a binding contract and will be incorporated, by reference, into the prime contract between owner and contractor. Any agreement stemming from the IDM negotiation process will be recorded on Document A3. This agreement will have binding effect and will be enforceable under the laws of the State of Florida. Failure to comply with the terms of the agreement will be subject to standard breach of contract damages.

The above referenced project is a dynamic, fast moving dispute resolution system. It is more sensitive to the demands of the construction process that problems be addressed

immediately when they arise. The AIA Article 15, while a bona fide attempt at creating an effective dispute resolution system during the construction process, has no teeth and is too slow moving. Take, for instance, the following example:

A contractor realizes that there is an unforeseen subsurface problem on a job site. The contractor approaches the owner, discloses the problem, and requests an extension of time on the contract since extra work will have to be performed. Consequently, a change order increases the contract price because new rental equipment is needed and due to the need of a subsurface soil consultant and added labor, the contract price will rise. The owner insists that these subsurface issues were reasonably foreseeable and should have been included into the contractor's estimate. The owner will not increase the contract time or price and the contractor submits the dispute to the initial decision maker.

If the AIA's A201 guidelines regarding the IDM allows for a process that can be long, drawn out and may not come to any conclusion at all. If a contractor refuses to continue working on the project until the dispute is resolved, delays will flow downstream to the subcontractors, suppliers and materialmen. The path of the project slows down substantially, subcontractors can not begin work on the project on time, suppliers are not getting paid when they should. If a dispute takes too much time to resolve, it could cost large amounts to the parties involved.

In the end, the IDM doesn't come to a decision – a result which is made possible by the options provided by the General Conditions Article 15. The project has been idle for several weeks and all parties involved are losing money.

The ConSiteSolutions process is speedy. It is a provider that aims to resolve issues fairly and expediently and minimizes delay impact costs by coming to an initial decision within days, not weeks. It will minimize the time involved to resolve the dispute by setting forth a process that is quick, dynamic and efficient.

What is this process?

Is this mediation? Arbitration? Is the IDM able to render a binding determination? ConSiteSolutions provides a unique method of dispute resolution, akin to a mediation/arbitration. Med-Arb combines the opportunity for a negotiated resolution available in mediation with the guaranteed finality of arbitration.

First, the parties will submit their dispute to the IDM. They will provide the IDM with any reports or documentation either they or the IDM deems necessary. This process is similar to submitting a pre-mediation report. The IDM will review submissions and may, at his or her discretion, caucus with the parties privately to discuss motives, goals and concerns. Everything discussed with the IDM is confidential. The IDM will not disclose the substance of party communications unless given the authority to do so.

The beginning of the official meetings of the parties will mirror a mediation. The IDMs will be trained to create an atmosphere conducive to open dialogue, communication between the parties and negotiation. It is extremely important for the relationship between the owner and contractor on a project to run smoothly. Accordingly, the parties are encouraged to work together and to minimize the IDM's role of the actual decision-maker. If, through a mediation-like process, the disputes can be resolved by and among the parties, it will preserve the

relationship of the owner and contractor. Negotiation of an outcome will normally end with an outcome with which both parties are content.

If the parties are unable to reach agreement, then the IDM assumes the functions of an arbitrator and renders a decision. The IDM, at this point, has been privy to the thoughts and evidence of the parties throughout mediation and during private caucus, if any. The IDM cannot disregard these insights when formulating the initial decision. The IDM will render his/her decision to which the parties are bound unless they begin a formal mediation process. The commencement of the formal mediation process can take time, money and may lead to delays of the project. Accordingly, the players in the construction process must feel confident in their IDM. ConSiteSolutions staff of highly skilled IDMs will aim to provide the parties with fair and equitable decisions that will not obstruct or delay the construction process.

Who are these Initial Decision Makers?

Owners? Design Professionals? Lawyers? Contractors? Mediators? Possibly all of the above. ConSiteSolutions' IDM's will have an extensive background in construction management, construction design and engineering, and will be well versed in contractual issues and repercussions of delays and work stoppage in the construction process. Our IDMs are not strictly lawyers, although we will have in-house access to construction attorneys who can be used as consultants to the IDM throughout the IDM process. Our IDMs do not give legal advice and the parties will agree to acknowledge that from the outset of retaining our services. To give a better idea of the training, our IDMs will have training in the following fields:

- Mediation. Mediation is an assisted negotiation. During the mediation process, a mediator assists the parties in communicating for the sake of reaching an agreement.

Mediation must be a voluntary, collaborative process in which the parties who are present have the ability to come to a dispute resolution on their own terms. There is no coercion or undue influence where the parties will be forced to accept an agreement. Mediation is generally confidential and communication and materials prepared therefor are not admissible in a court of law. A mediator must remain impartial, neutral and unbiased.

Our IDMs will go through mediation training. In the State of Florida, there is no Bar membership requirement for certified Circuit Court Mediators. Accordingly, our IDMs may be certified mediators by the Florida Supreme Court. Our mediators, however, are not required to be actually certified but, for the purposes of the initial stages of the ConSiteSolutions dispute resolution system, our IDMs will be versed in the process of mediation.

- Arbitration. Our IDMs will have arbitration training. Typically, a strict arbitrator remains removed from the settlement process and will determine liability and responsibilities. Upon rendering a decision, the arbitrator will make a determination of damages or declaration of rights. While ConSiteSolution's process is not a strict arbitration, our IDMs are certified or, at the very least, have American Arbitration Association training.
- LEED Certification. With the emergence of Green Construction, many new problems arise on construction projects that are unique and evolving. The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is a third party

certification program and the nationally accepted benchmark for the design, construction and operation of high performance green buildings. LEED provides building owners and operators with the tools they need to have an immediate and measurable impact on their buildings' performance. Where a project is expected to meet certain levels of LEED Certification, an IDM's decision must not conflict with these goals. Accordingly, our IDMs are LEED Certified. LEED Accredited Professionals are professionals who have demonstrated a thorough understanding of green building practices and principles and familiarity with LEED requirements, resources and processes. ConSiteSolutions is looking toward the future of construction and design by equipping its IDMs with familiarity of cutting edge and emerging fields of building.

- Construction Management Training. ConSiteSolutions' IDMs will be educated in construction management. This training is dedicated towards project management, critical path method, construction scheduling, familiarity with standard construction contractual provisions and means and methods. While our IDMs will have an extensive background in construction, they will continuously undergo training to not only solidify their solid background in construction, but to educate themselves with respect to new cutting edge topics in the construction industry.
- Client Centered Approach. Most importantly, ConSiteSolutions' IDMs are working for you. It is our intention to ensure that your project runs as smoothly and with as few delays as possible. We will work with you to ensure that disputes are resolved equitably and fairly. We care about our clients and will attempt to divert you from costly litigation

or arbitration. ConSiteSolutions' IDMs will constantly be evaluating themselves and will undergo frequent firm wide evaluations as to performance and how to better serve our clients.

Is ConSiteSolutions Insured?

Yes. IDMs will be insured by Mediation/Arbitration Insurance. The parties will agree to indemnify ConSiteSolutions to the amount which ConSiteSolutions receives as compensation for its services if the amount of damages claimed against ConSiteSolutions beyond the sum covered by the policy.

Does ConSiteSolutions Evaluate Itself?

Yes. But the main feedback regarding the performance of our IDMs comes from the clients. After every initial decision session, the clients will be given the A4 form which will ask the participants to evaluate the performance of the IDM. Evaluation categories will include willingness to listen, accessibility during pre-meeting communication, appearance of impartiality, knowledge of the material, the IDM's demeanor, personality, comfort level. The participants will also be asked to leave any additional comments, either negative or positive, which accurately reflect their experience and perceived success during the IDM process. A copy of Document A4 is attached hereto.

What if we have a grievance with the IDM?

As part of our quality control program, a party may file a grievance form with ConSiteSolutions if there is an issue with the IDM. If, as a client, you feel that the IDM has failed to remain impartial or has made a fatally erroneous decision, you may appeal the decision

directly to ConSiteSolutions' review board. The review board is a group of three ConSiteSolutions members, two of which will be IDMs and one of which will be a firm manager. Appeals must be made within twenty four (24) hours of rendering of the initial decision for the sake of acceleration and efficiency on the site. Because ConSiteSolutions is here to serve you, the customer, we will provide you with a fair review of the decision if necessary. The grievance form is Document A5 and is attached hereto.

In the event that a party is unhappy with the appeal process, they may continue to mediation or the specified method of dispute resolution as set forth in the prime contract. This process gives the players in the construction process several points of entry to dispute resolution. The ConSiteSolutions process is the original point of entry to dispute resolution. It is the fastest and most accelerated as well.

What is the Proper Attire of the Initial Decision Meeting?

ConSiteSolutions is concerned with the content of and resolution of the process, not with the appearance. Most likely, these meetings will take place on a construction project site in a trailer or at our offices. Our IDMs will wear khaki pants, shoes or work boots, and a polo or button down shirt. Hardhats are required during jobsite walk-throughs in accordance with OSHA. The parties are invited to dress as formally or casually as they deem necessary.

Should I bring my lawyer to the Initial Decision Meeting?

There is no mandatory attendance of an attorney at the initial decision meeting. Further, it is not necessary that an attorney participates in any part of the initial decision. ConSiteSolutions, however, encourages the parties to bring counsel if it makes the parties more comfortable.

Pricing and Payment

From the perspective of the owners and general contractors, the use of the IDM introduces a new expense. However, the new General Conditions fails to specify the party responsible for paying for the IDM's services. When the IDM requires assistance from the architect to make an initial decision, the architect's agreement with the owner requires that the owner pays for the architect time as an "additional service." ConSiteSolutions does not agree with this contract framework, however. This defeats the objective in creating the IDM, which is to remove potential financial bias on the part of the party making the initial decision. Further, this would potentially create a situation where the owner pays two parties (both the architect and the IDM) for the resolution of a problem.

To remediate these fatal flaws in the General Conditions, ConSiteSolutions will provide a skilled architectural consultant when required to mitigate, if not relieve, the architect of additionally servicing the owner. The owner and contractor will share the expenses associated with the project specific IDM. The parties will pay, in equal parts, to cover the costs of the IDM service. The parties will sign a written agreement of services, with a termination for convenience provision which allows the parties to terminate the services of ConSiteSolutions at the parties' mutual agreement. It is recommended, however, that the parties understand Florida law relating to termination for convenience provisions; arbitrary, bad faith or capricious termination of a contract, even where there exists a termination for convenience provision, will subject the parties to breach of contract liability.

The parties may compensate ConSiteSolutions in one of two ways. The parties may want an IDM specifically designated to their jobsite. The IDM is available at any time and works only

on that project. Owners and contractors on large projects may want to take this route since there may be many disputes that arise during the life of a project. Compensation for this service would be a fixed fee at a percentage of the contract price. The price will be negotiated by and among the parties.

The second option is more applicable to smaller projects. Here, the parties may pay a one time retainer fee to retain ConSiteSolutions' services for their project. After that, the IDM will bill at an hourly rate for the resolution of disputes that arise on a project. IDMs will not work only on your project but will still give his/her clients the same level of attentiveness required of the position.

Can Subcontractors Use This Service?

Absolutely. Where the General Conditions are incorporated through flow down provisions into the terms of the subcontracts between the contractor and subcontractors, the subcontractors will have this service available to them. Subcontractors will, presumably, use this service less frequently than the owner and general contractor since the scope of their work is both smaller and more concentrated. A subcontractor will pay a fee to be negotiated at the execution of the subcontract for every time it uses the service. The use of this service is not compensable in the event a subcontractor prevails on a dispute. The price of using the ConSiteSolutions service shall not be built into a contractor's estimate since payment would, indirectly, be coming from the owner.

The subcontractor will have the same ability to appeal the IDM's decision if necessary and will have traditional means of dispute resolution such as mediation, arbitration or litigation, depending on the methods and procedures as set forth in the contract.

Will food be served at the initial decision meeting?

Food will not be provided at the initial meeting. Participants are invited to bring any beverages or food in the event that they prefer.

Are the IDMs bound by any code of professional responsibility or ethics?

While ConSiteSolutions is a private firm, there are no professional ethics rules or regulations which directly apply to ALL of our IDMs. If an IDM is a certified mediator, they are bound to comply with the controlling jurisdiction's rules of ethics governing mediators. If an IDM is a certified by the American Arbitration Association, they are bound to comply with the controlling jurisdiction's rules of ethics governing arbitrators as well as the AAA's ethics guidelines. If an IDM is a licensed attorney, they are bound to comply with the controlling jurisdiction's rules of ethics governing the legal profession. ConSiteSolutions aims to select individuals who will uphold their moral obligation to providing fair, unbiased, equitable services that are client centered to be their IDMs.

How should Article 15 of the AIA 2007 A201 General Conditions be amended if we intend to use ConSiteSolution's Dispute Resolution Service?

The parties are encouraged to use the following provisions to successfully implement the procedures of ConSiteSolutions:

15.2 INITIAL DECISION

15.1.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9., and 11.3.10 shall be referred to the Initial Decision Maker for initial decision. ConSiteSolutions will serve as the Initial Decision Maker. Except for those claims excluded by this Section 15.2.1, an initial

decision shall be required as a condition precedent to mediation of any Claim arising prior to the date of final payment is due. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

15.1.1.1. The Initial Decision MAY/MAY NOT (circle one) decide disputes between the Contractor and Subcontractors, where the Subcontractors agree to pay a fee for access to the process. _____ Owner Initials _____ Contractor Initials

15.2.2 The Initial Decision Maker will review Claims and within twenty (24) hours of the receipt of a Claim (Document A1) and take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party in which the parties have forty-eight (48) hours to respond, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise or negotiation, or (5) allow the parties to come to a mutually agreeable determination regarding the outcome of the dispute, the result of which will be contractually binding.

15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner and Contractor to authorize retention of such persons at the Owner's and Contractor's shared expense.

15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within forty-eight hours after receipt of such request, and shall either (1) provide a response on the requested supporting data, or (2)

advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and(3) notify the parties and the Architect of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

Conclusion

Ultimately, ConSiteSolutions aims to provide a hybrid dispute resolution system to the construction process that is both savvy and knowledgeable of the construction process and sensitive to the needs and demands of efficiency, expediency and accuracy when addressing and deciding disputes on the construction site.

Petitioner's Signature

Initial Decision Maker Signature

Received on Date

Signature of Owner

Signature of Contractor

Date

Date

ConSiteSolutions FORM A4

Initial Decision Maker Evaluation Form

Pursuant to the Request for Preliminary Hearing dated _____ and, consequently, the meeting between the undersigned and the Initial Decision Maker, the following scores are given to the overall performance of ConSiteSolutions' services provided with respect to _____ (name of project):

Please mark a scale of 1 to 5, with 1 being the lowest possible score or 5 being the highest possible score. Please mark N/A where needed:

1. Accessibility of IDM during process _____
2. IDM's familiarity with subject matter _____
3. IDM's overall demeanor during meeting _____
4. IDM's appearance of impartiality _____
5. IDM's creation of valuable conversation _____
6. IDM's timely responses to requests _____
7. How pleased are you with the outcome of ConSiteSolutions services? _____
8. How much confidence do you have in the Initial Decision Maker? _____
9. IDM's willingness to listen? _____
10. Would you recommend this particular IDM and ConSiteSolutions' service? _____

Additional
Comments _____

Pricing and Payment

From the perspective of the owners and general contractors, the use of the IDM introduces a new expense. However, the new General Conditions fails to specify the party responsible for paying for the IDM's services. However, when the IDM requires assistance from the architect to make an initial decision, the architect's agreement with the owner requires that the owner pays for the architect time as an "additional service." ConSiteSolutions does not agree with this contract framework, however. This defeats the objective in creating the IDM, which is to remove potential financial bias on the part of the party making the initial decision. Further, this would potentially create a situation where the owner pays two parties (both the architect and the IDM) for the resolution of a problem.

To remediate these fatal flaws in the General Conditions, ConSiteSolutions will provide skilled a architectural consultant when required to mitigate, if not relieve, the architect of additionally servicing the owner and the owner paying therefor. First the owner and contractor will share the expenses associated with the project specific IDM. The parties will pay, in equal parts, to cover the costs of the IDM service. The parties will sign a written agreement with services, with a termination for convenience provision which allows the parties to terminate the services of OnSiteSolutions at the parties' mutual agreement. It is recommended, however, that the parties understand Florida law relating to termination for convenience provisions; arbitrary, bad faith or capricious termination of a contract, even where there exists a termination for convenience provision, will subject the parties to breach of contract liability.

The parties may compensate ConSiteSolutions in one of two ways. The parties may want an IDM specifically designated to their jobsite. The IDM is available at any time and works only on that project. Owners and contractors on large projects may want to take this route since there may be many disputes that arise during the life of a project. Compensation for this service would be a fixed fee at ____% the contract price. The price will be negotiated by and among the parties.

The second option is more applicable to smaller projects. Here, the parties may pay a one time retainer fee to retain ConSiteSolutions' services for their project. After that, the IDM will bill at an hourly rate for the resolution of disputes that arise on a project. IDMs will not work only on your project but will still give his/her clients the same level of attentiveness required of the position.

Can Subcontractors Use This Service?

Absolutely. Where the General Conditions are incorporated through flow down provisions into the terms of the subcontracts between the contractor and subcontractors, the subcontractors will have this service available to them. Subcontractors will, presumably use this service less frequently than the owner and general contractor since the scope of their work is both smaller and more concentrated.

There exists a very limited amount of conflicts and problems that arise between the contractor and subcontractor. Accordingly, the subcontractors have a point of entry into the service. The use of this service is not compensable in the event a subcontractor prevails on a dispute. A subcontractor will pay a fee to be negotiated at the execution of the subcontract for every time it uses the service. The price of using the ConSiteSolutions service shall not be built into a contractor's estimate since payment would, indirectly, be coming from the owner.

The subcontractor will have the same ability to appeal the IDM's decision if necessary and will have traditional means of dispute resolution such as mediation, arbitration or litigation, depending on the methods and procedures as set forth in the contract.