CONTENTS

Abo	ut the	e Editors	xxv
Abo	ut the	<i>Authors</i>	xxvii
		edgments	xxxvii
	oducti		xxxix
Cha	pter 1	Fig. Alia Kristo la Critto de la Monta Propinsia de la Critta de C	
	•	the Arbitration Clause	1
		ımshon	
		Importance of Clause	1
	II.	Standard Forms	1
	III.	Modify Standard Forms or Ab Initio Drafting?	2
	IV.	What to Insist Upon Retaining/Rejecting When	
		Negotiating an ADR Clause	8
	V.	Analysis of Popular Form ADR Clauses	8
Cha	pter 2	Demestic and international ratios applied Assures annial Relief tentan fill of tental to the country of the country of the	
	,	g Arbitration Agreements	13
		D. Ness and Thomas E. Lynch	
		Drafting Enforceable Arbitration Agreements	13
	II.		
		to Arbitrate	15
	III.	General Considerations for Enforcing Arbitration	
		Agreements	16
		A. The Parties to the Arbitration Agreement	17
		B. Types of Assistance Available from Courts to Enforce	
		Agreements to Arbitrate	18
		Court Orders Compelling Arbitration and Staying	
		Litigation of Disputes Subject to Arbitration	18
		2. Court Orders Providing Procedural Assistance	united a
		for the Organization of an Arbitration	19
		3. Provisional Remedies in Aid of Arbitration	20
		C. Jurisdiction and Venue Are Required to Obtain Assistance	
		from Courts	21
		Subject-Matter Jurisdiction	21
		2. Personal Jurisdiction	23
		3. Venue	23
	IV	Conditions Precedent to Arbitration Can Serve to Limit	20
	14.	or Delay Enforcement of Arbitration Agreements, But Often	
		for Productive Purposes	23
		101 1 10 Miletite I Mipouco	20

	V. The Terms of Arbitration Agreements Define Their Scope,	
	and Therefore the Extent to Which They Can Be Enforced	24
	A. Broad and Narrow Arbitration Clauses	25
	B. The Roles of Arbitral Institutions, Institutional Arbitration	20
	Rules, and Their Typically Broad Suggested Arbitration	
	Provisions	27
1	7I. Arbitrability and Enforcement: What Have the Parties	21
	Agreed to Arbitrate, and Who Decides?	28
	A. Courts Versus Arbitrators as the Deciders of Arbitrability	29
	B. Arbitrability Is Distinct from the Validity of the Contract	31
	C. Arbitrability Remains Distinct from Other Contract	31
	Defenses	22
		32
	D. Relevance of the Parties' Agreements Regarding	
	Arbitrability, Including Through Incorporation of Arbitration Provisions	20
V		32
*	II. Some Special Considerations for Enforcing Agreements to Arbitrate	-
		33
	A. Parties Can Waive Their Rights to Arbitrate	33
	B. Parties Can Place Time Limits on Their Right	
	to Arbitrate	35
VI	C. Parties Can Agree to Unilateral Arbitration Provisions	36
VI.	II. Types of Claims Frequently Relevant to Efforts to Enforce	
	Arbitration Agreements	36
	A. Breach of Contract Claims	36
	B. Tort Claims	37
	C. Statutory Rights and Remedies	37
L	X. Common Defenses to the Enforcement of Arbitration	
	Agreements	38
	A. Contract Formation and the Identities of the Parties	38
tipo, lo	B. Fraud, Unconscionability, and Illegality	39
	K. Conclusion	40
61	1. Court Orders Competing, Arbitration and engineers	
Chapter		
	ation Providers	41
	Bruner and Albert Bates Jr.	
	I. Introduction	41
I	I. American Arbitration Association	42
	A. History	42
	B. The AAA Organization	42
	C. Philosophy	43
	D. Involvement in and Service to the Construction Industry	44
	E. Office Locations	44
	F. Websites	45
	G. AAA Construction Neutrals	45
	H. AAA Distinguishing Characteristics	45
	I. AAA Construction Industry Rules and Procedures	46

Contents

III.	International Centre for Dispute Resolution	49
	A. History	49
	B. The ICDR Organization	50
	C. Philosophy	51
	D. Websites	51
	E. ICDR Neutrals	52
	F. ICDR Distinguishing Characteristics	53
	G. ICDR Rules and Procedures	54
IV.	JAMS, the Resolution Experts	58
	A. History	58
	B. Makeup of the JAMS Organization	59
	C. Philosophy	59
	D. Involvement in and Service to the Construction Industry	59
	E. JAMS Resolution Center Locations	60
	F. Websites	60
	G. Where JAMS GEC Neutrals Come From and How One	
	Becomes a JAMS GEC Neutral	60
	H. JAMS Distinguishing Characteristics	61
	I. JAMS Rules and Procedures	62
	Domestic and International Rules and Procedures	62
	2. Filing and Fees	62
	3. Neutral Selection	63
	4. Discovery	63
	5. Hearings	63
	6. Award	63
	7. Post-Award	63
	8. Appellate Process	63
V.	International Institute for Conflict Prevention	. 05
٧.	and Resolution	64
	A. History	64
	B. Philosophy	65
	C. Involvement in and Service to the Construction Industry	66
	D. Locations	66
		67
	E. Websites F. CPR Neutrals	
		67
	G. CPR Distinguishing Characteristics	67
17T	H. CPR Non-Administered Arbitration Rules	67
VI.	International Court of Arbitration, International Chamber	70
	of Commerce	70
	A. History	70
	B. The International Court of Arbitration	72
	C. Philosophy	73
	D. Involvement with the Construction Industry	74
	E. Website Additional December 11V	74
	F. ICC Neutrals and the Appointment Process	74
	G. Distinguishing Characteristics of ICC Arbitration	75

CONTENTS

		H. ICC Arbitration Rules and Procedures	77
		1. Rules	77
		2. Filing and Fees	78
		3. Information Exchange	78
		4. Hearings	79
		5. Award	79
		6. Post-Award	79
		7. Appellate Process	79
	VII.		79
		A. History	79
		B. Makeup of Organization	80
		C. Philosophy	80
		D. Involvement in and Service to the Construction	
		Industry	80
		E. LCIA Location	81
		F. Website	81
		G. Where LCIA Neutrals Come From, and How One Becomes	
		an LCIA Neutral	81
		H. LCIA Distinguishing Characteristics	81
		I. LCIA Rules and Procedures	82
		1. Filing and Fees	82
		2. Neutral Selection	82
		3. Information Exchange	82
		4. Hearings	82
		5. Award	83
		6. Post-Award	83
		7. Appellate Process	83
	VIII.	Conclusion	83
			00
Cha	pter 4		
Typ	es of	Arbitration in Construction	85
Cha	rles M	I. Sink	00
	I.	Claims Resolution in the Construction Industry	85
	II.	AIA Approach to Dispute Resolution in Contracts	86
	III.	Arbitration under AIA Document A201	86
		A. Arbitration Is Optional	86
		B. Incorporation of AAA Rules	87
		C. A Broad Arbitration Clause	87
		D. Enforcement of Award	88
		E. Consolidation and Joinder Are Permitted	89
	IV.	ConsensusDocs 200's Approach to Arbitration	91
	V.	Solo Arbitrator versus a Panel	92
	VI.	Party-Appointed Arbitrators	96
	VII.	"Baseball" Arbitration	98
		THE RESERVE OF THE PROPERTY OF	10

Contents

IX. Conclusion 102		VIII.	Mediation-Arbitration or "Med-Arb"	100
Chapter 5 Arbitrators 103		IX.	Conclusion Conclusion	102
Arbitrators Paul M. Lurie and Kenneth M. Roberts I. Introduction II. Selection of Arbitrators III. Problems with Selecting Party-Appointed Arbitrators IIV. Number of Arbitrators V. Special Arbitrators A. Consolidation and Joinder B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators VIII. The Panel Chair IX. Court Appointment of Arbitrators III. X. Arbitrator Disclosures Affecting Neutrality IX. The AAA/ABA Code of Ethics IXII. Agency Rules for Disclosure IXIII. California Standards IXIV. Timely Issuance of Award IXIV. Timely Issuance of Award IXIV. Arbitrator Compensation IXVI. Arbitral Immunity IXVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor I. S				
Paul M. Lurie and Kenneth M. Roberts I. Introduction II. Selection of Arbitrators III. Problems with Selecting Party-Appointed Arbitrators IIV. Number of Arbitrators IV. Special Arbitrators A. Consolidation and Joinder B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator IV. Decisions Reserved for the Agency IVI. Decisions Reserved for the Agency IVII. Qualifications of Arbitrators III. The Panel Chair IX. Court Appointment of Arbitrators III. X. Arbitrator Disclosures Affecting Neutrality IX. The AAA/ABA Code of Ethics IXII. Agency Rules for Disclosure IXIII. California Standards IXII. Timely Issuance of Award IXIV. Timely Issuance of Award IXIV. Timely Issuance of Award IXIV. Arbitrator Compensation IXVI. Confidentiality IXVII. Arbitral Immunity IXVIII. Professional Liability Insurance III. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder IV. Jamical Assistance for Consolidation and Joinder IV. Jamical Arbitration Act III. Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines IV. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor IV. Joner	Cho	pter 5	I. Choice of Law—Selection by Contract Desiringdu? mist?	
I. Introduction 103 II. Selection of Arbitrators 104 III. Problems with Selecting Party-Appointed Arbitrators 106 IV. Number of Arbitrators 107 V. Special Arbitrators 108 A. Consolidation and Joinder 108 B. Special Arbitrator for Preliminary Relief 108 C. Consent Award Arbitrator 109 VI. Decisions Reserved for the Agency 109 VII. Qualifications of Arbitrators 110 VIII. The Panel Chair 112 IX. Court Appointment of Arbitrators 112 X. Arbitrator Disclosures Affecting Neutrality 113 XI. The AAA/ABA Code of Ethics 113 XII. Agency Rules for Disclosure 114 XIII. California Standards 117 XIV. Timely Issuance of Award 119 XV. Arbitrator Compensation 120 XVI. Confidentiality 120 XVIII. Professional Liability Insurance 121 Chapter 6 Consolidation and Joinder 123 Chapter 6 Consolidation and Joinder 123 II. Introduction	Arl	oitrate	H. Coverning Law—When None is Specifiedditaril and arc	103
II. Selection of Arbitrators III. Problems with Selecting Party-Appointed Arbitrators IV. Number of Arbitrators V. Special Arbitrators A. Consolidation and Joinder B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators III. The Panel Chair IX. Court Appointment of Arbitrators III. Court Appointment of Arbitrators X. Arbitrator Disclosures Affecting Neutrality XII. Agency Rules for Disclosure XIII. California Standards III. California Standards III. Timely Issuance of Award XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Procees for Consolidation and Joinder v. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor 143 C. Owner	Pau	ıl M. I	urie and Kenneth M. Roberts	
III. Problems with Selecting Party-Appointed Arbitrators IV. Number of Arbitrators V. Special Arbitrators A. Consolidation and Joinder B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators VIII. The Panel Chair IX. Court Appointment of Arbitrators X. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XV. Arbitrator Compensation XV. Arbitrator Compensation XVI. Confidentiality XVIII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Chapter 6 Consolidation Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor 143 C. Owner		I.		103
IV. Number of Arbitrators V. Special Arbitrators A. Consolidation and Joinder B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators VIII. The Panel Chair IX. Court Appointment of Arbitrators VIII. The Panel Chair IX. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Chapter 6 Consolidation and Joinder I. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor IV. Jaysum Professional B. Subcontractor IV. Owner		II.	Selection of Arbitrators	104
V. Special Arbitrators A. Consolidation and Joinder B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators 1109 VIII. The Panel Chair 1112 IX. Court Appointment of Arbitrators 1112 IX. Court Appointment of Arbitrators 1113 XI. The AAA/ABA Code of Ethics 1113 XII. Agency Rules for Disclosure 1114 XIII. California Standards 1117 XIV. Timely Issuance of Award 1119 XV. Arbitrator Compensation 1120 XVI. Confidentiality 1120 XVII. Arbitral Immunity 1120 XVIII. Professional Liability Insurance 1121 Chapter 6 Consolidation and Joinder 1122 Chapter 6 Consolidation and Joinder 1134 II. Standard-Form Clauses III. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" 1124 III. American Arbitration Association's "R-7 Arbitrator" 1125 IV. JAMS's Equivalent Process for Consolidation and Joinder 126 IV. Judicial Assistance for Consolidation and Joinder 127 IV. Jams's Equivalent Proceedings 128 A. Federal Arbitration Act 129 B. State Laws Promoting Consolidation and Judicial Doctrines 130 VI. Typical Parties Consolidated or Joined in a Construction Case 140 A. Design Professional B. Subcontractor 143 C. Owner		III.	Problems with Selecting Party-Appointed Arbitrators	106
A. Consolidation and Joinder B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators VIII. The Panel Chair IX. Court Appointment of Arbitrators III. X. Arbitrator Disclosures Affecting Neutrality IXI. The AAA/ABA Code of Ethics III. Agency Rules for Disclosure III. Agency Rules for Disclosure III. California Standards III. Timely Issuance of Award III. California Office of Award III. Arbitrator Compensation IXVI. Confidentiality IXVIII. Arbitral Immunity I20 III. Professional Liability Insurance Chapter 6 Consolidation and Joinder II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder IV. Judicial Assistance for Consolidation and Joinder III. American Arbitration Act III. B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor I43 B. Subcontractor I43 C. Owner		IV.	Number of Arbitrators	107
B. Special Arbitrator for Preliminary Relief C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators 110 VIII. The Panel Chair 112 X. Court Appointment of Arbitrators 112 X. Arbitrator Disclosures Affecting Neutrality 113 XI. The AAA/ABA Code of Ethics 114 XII. Agency Rules for Disclosure 115 XIII. California Standards 117 XIV. Timely Issuance of Award 119 XV. Arbitrator Compensation 120 XVI. Confidentiality 120 XVIII. Arbitral Immunity 120 XVIII. Professional Liability Insurance 121 Chapter 6 Consolidation and Joinder 123 Charles M. Sink 1. Introduction 11. Standard-Form Clauses 111. American Arbitration Association's "R-7 Arbitrator" 124 IV. JAMS's Equivalent Process for Consolidation and Joinder 125 V. Judicial Assistance for Consolidation and Joinder 126 IN Jamerican Arbitration Act 127 B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor 143 B. Subcontractor 143 B. Subcontractor 145		V.	Special Arbitrators	108
C. Consent Award Arbitrator VI. Decisions Reserved for the Agency VII. Qualifications of Arbitrators VIII. The Panel Chair IX. Court Appointment of Arbitrators X. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVIII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 109 109 109 109 109 109 109 10			A. Consolidation and Joinder	108
VII. Decisions Reserved for the Agency VII. Qualifications of Arbitrators VIII. The Panel Chair IX. Court Appointment of Arbitrators X. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVIII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner			B. Special Arbitrator for Preliminary Relief	108
VII. Qualifications of Arbitrators VIII. The Panel Chair IX. Court Appointment of Arbitrators X. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XIV. Timely Issuance of Award XVI. Confidentiality XVI. Confidentiality XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner			C. Consent Award Arbitrator	109
VIII. The Panel Chair IX. Court Appointment of Arbitrators X. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner		VI.	Decisions Reserved for the Agency	109
IX. Court Appointment of Arbitrators X. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor III. But And Arbitration Case A. Design Professional B. Subcontractor III. And III. And III. III. III. III. III. III. III. II		VII.	Qualifications of Arbitrators	110
X. Arbitrator Disclosures Affecting Neutrality XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder I. Introduction I. Standard-Form Clauses II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor I. 433 C. Owner		VIII.	The Panel Chair	112
XI. The AAA/ABA Code of Ethics XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor I. Has a Construction Case III. American Arbitration Act III. American Arbitratio		IX.	Court Appointment of Arbitrators	112
XII. Agency Rules for Disclosure XIII. California Standards XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner		X.	Arbitrator Disclosures Affecting Neutrality	113
XIII. California Standards XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner		XI.	The AAA/ABA Code of Ethics	113
XIV. Timely Issuance of Award XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner		XII.	Agency Rules for Disclosure	114
XV. Arbitrator Compensation XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner		XIII.	California Standards	117
XVI. Confidentiality XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 123 124 125 126 127 128 129 129 129 129 120 120 121 121		XIV.	Timely Issuance of Award	119
XVII. Arbitral Immunity XVIII. Professional Liability Insurance Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor I. 123 124 125 126 127 128 129 129 129 129 120 120 121 121		XV.	Arbitrator Compensation	120
Chapter 6 Consolidation and Joinder I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner		XVI.	Confidentiality	120
Chapter 6 Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor I43 C. Owner	201	XVII.	Arbitral Immunity	120
Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 123 124 125 126 127 128 129 129 129 129 129 120 120 120 120 121 121 120 120 120 120)	(VIII.	Professional Liability Insurance	121
Consolidation and Joinder Charles M. Sink I. Introduction II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 123 124 125 126 127 128 128 129 129 129 129 120 120 120 121 121 121 122 123 123 124 125 126 127 128 129 129 129 120 120 120 120 120 120 120 120 120 120			2. No Authority, But Not Powerless	
I. Introduction 123 II. Standard-Form Clauses 124 III. American Arbitration Association's "R-7 Arbitrator" 126 IV. JAMS's Equivalent Process for Consolidation and Joinder 130 V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings 131 A. Federal Arbitration Act 132 B. State Laws Promoting Consolidation and Judicial Doctrines 134 VI. Typical Parties Consolidated or Joined in a Construction Case 140 A. Design Professional 140 B. Subcontractor 143 C. Owner 145	Cha	pter 6	III. Depositions and in the second se	
I. Introduction 123 II. Standard-Form Clauses 124 III. American Arbitration Association's "R-7 Arbitrator" 126 IV. JAMS's Equivalent Process for Consolidation and Joinder 130 V. Judicial Assistance for Consolidation and Joinder 131 A. Federal Arbitration Act 132 B. State Laws Promoting Consolidation and Judicial Doctrines 134 VI. Typical Parties Consolidated or Joined in a Construction Case 140 A. Design Professional 140 B. Subcontractor 143 C. Owner 145	Con	nsolic	lation and Joinder	123
II. Standard-Form Clauses III. American Arbitration Association's "R-7 Arbitrator" IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner	Cha	irles N	1. Sink	
III. American Arbitration Association's "R-7 Arbitrator" 126 IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings 131 A. Federal Arbitration Act 132 B. State Laws Promoting Consolidation and Judicial Doctrines 134 VI. Typical Parties Consolidated or Joined in a Construction Case 140 A. Design Professional 140 B. Subcontractor 143 C. Owner 145		I.	Introduction	123
 IV. JAMS's Equivalent Process for Consolidation and Joinder V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 130 131 132 132 133 143 144 145 		II.	Standard-Form Clauses	124
V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings 131 A. Federal Arbitration Act 132 B. State Laws Promoting Consolidation and Judicial Doctrines 134 VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional 140 B. Subcontractor 143 C. Owner		III.	American Arbitration Association's "R-7 Arbitrator"	126
V. Judicial Assistance for Consolidation and Joinder in Arbitration Proceedings 131 A. Federal Arbitration Act 132 B. State Laws Promoting Consolidation and Judicial Doctrines 134 VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional 140 B. Subcontractor 143 C. Owner		IV.	JAMS's Equivalent Process for Consolidation and Joinder	130
A. Federal Arbitration Act B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner		V.	Judicial Assistance for Consolidation and Joinder	
B. State Laws Promoting Consolidation and Judicial Doctrines VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 134 140 143 143			in Arbitration Proceedings	131
VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 140 140 141 143			A. Federal Arbitration Act	132
VI. Typical Parties Consolidated or Joined in a Construction Case A. Design Professional B. Subcontractor C. Owner 140 140 141 143			B. State Laws Promoting Consolidation and Judicial Doctrines	134
A. Design Professional 140 B. Subcontractor 143 C. Owner 145		VI.		140
B. Subcontractor 143 C. Owner 145				140
C. Owner 145				143
VII Conclusion 146				145
VII. Conclusion		VII.	Conclusion	146

viii CONTENTS

Chapter 7
Choice of Law and Venue
Douglas S. Oles and Benjamin D. Greenberg
I. Choice of Law—Selection by Contract Drafting 147
II. Governing Law—When None Is Specified 150
III. Venue—Selection by Contract Drafting 152
IV. Venue—When None Is Specified 156
10 Selection of Arbitrators assessed scales 7. Armelia Process
Chapter 8
Discovery 159
Richard J. Tyler
I. Discovery 159
II. Arbitration Laws
A. Federal Arbitration Act
B. State Arbitration Acts
1. Uniform Arbitration Act
2. Revised Uniform Arbitration Act 163
III. Arbitration Rules 165
A. American Arbitration Association 165
B. JAMS 167
C. Guidelines 169
IV. Discovery Generally 170
V. Pre-Arbitration Discovery
VI. Document Production 174
A. Party Document Production 174
B. Non-Party Document Production 175
1. Yes, No, Maybe
2. No Authority, But Not Powerless 179
VII. Depositions 180
A. Party Depositions 180
B. Non-Party Depositions 180
VIII. Electronically Stored Information 183
IX. Issuance and Service of Arbitral Subpoenas 185
X. Enforcement of Arbitral Discovery Orders and Subpoenas 190
A. Party Sanctions
1. Inherent Authority 190
2. Broad Construction of the Arbitration Rules 191
3. Broad Construction of the Parties' Arbitration
Agreement 192
B. Non-Party Sanctions 192
C. Subpoenas
The An Contractor a Page 1 to the Anne Anne 1 to the Anne
Appendix 1
Compendium of State Arbitration Laws 194
Chapter 9
Prehearing Procedures 201
J. Snowden Stanley, Jr.

Contents ix

	I.	Prehearing Conferences	201
		A. Agenda for Prehearing Conferences	202
	II.	Case Management Order	206
	III.	Claim Submission	208
	IV.	Motions Practice	209
		A. Dispositive Motions	210
		B. Jurisdiction or Arbitrability	210
		C. Bifurcation	211
		D. Motions in Limine	213
		E. Sanctions	214
		F. Continuances	215
		G. Disqualification of Arbitrators	216
		H. Disqualification of Counsel	217
	V.	Prehearing Briefs	217
125		What the Clark Marsh wall resistance Astrophicany A	
	pendix		210
Ag	enda	for Prehearing Conference	219
CI	. 1	of the Award	
	apter 1		227
		itration Hearing	227
Ear		M. Amorosi and Richard F. Smith	227
		Purpose of the Hearing	
	11.	Representation by Counsel	227
		A. Rules Applicable to Legal Representation	227
		and Pro Se	227
	***	B. Unauthorized Practice of Law	228
	III.		229
	IV.	Role of the Arbitrator	230
	V.	Due Process	231
	VI.	Subpoena Power Over Witnesses and Documents	222
		for the Hearing	233
		A. Subpoenas for Attendance of Witnesses	233
		B. Subpoenas for Documents	234
	VII.	Prehearing Submissions	234
	VIII.	Form of the Hearing	235
	IX.		236
	X.	Opening Statements	236
	XI.		207
		at the Hearing	237
	XII.		237
		A. Fact Witness Testimony	238
		b. Expert witnesses	240
		C. Documentary Evidence	242
		1. Process for Admission	242
		2. Core Exhibits/"Bundle"	242
		3. Evidentiary Exhibits	242
		4. Demonstrative Exhibits	243
		5. Managing Exhibits	243

	D. Other Types of Evidence	243
	1. Site Visit	243
	2. Independent Investigation by the Arbitrator	244
	3. Video Conferencing	244
	4. Use of Affidavits	244
	5. Rule Against Witnesses	245
	6. Time Allocation	245
	7. Transcript E. Multiparty Hearing/Third-Party Claims	246 246
	F. Adjournment of the Hearing	248
	G. Closing Arguments	249
	H. Posthearing Briefs	249
	I. Closing the Hearing/Submission of the Case	250
	J. Confidentiality of the Hearing	251
	K. Award Type: Reasoned or Regular	251
	L. Award of Costs	252
VIII.	Conclusion	253
Chantan 1	of w	
Chapter 1	of a Winning Presentation	255
Judith B.		200
	Introduction	255
	Prehearing	255
	A. Dispositive Arbitral Motions—Taking Advantage	104
	and Controlling Abuses	255
	1. Motions that Are Not Expected to Succeed	
	in Arbitration	255
	2. Other Motions, and Disposing of Them	256
	B. Separate the Claims into Hearing Segments	256
	C. Reservation of Claims	257
III.	Opening Presentation	257
	A. What the Arbitrator Wants to Hear and Needs to Hear	257
	B. A Secret Lies in the Manner of Presenting Your Opening	257
235	C. Waiving/Reserving the Opening	258
IV.	Presentation of Evidence	258
	A. Use of Witnesses' Personal Traits and Abilities	258
	1. The Runaway Witness	259
	2. Where There Is a Language Challenge	259
	3. The Profane Witness 4. The Quick Witness	260
	4. The Quick WitnessB. The Expert Witness	260 260
	The Expert Witness Dueling Experts ("Hot Tubbing")	261
	2. Confronting the Other Expert When There Is	201
	No "Duel"	261
	3. Voir Dire of the Expert	262
	C. Put Key Exhibits in a Separate Binder	262
	D. No Writing Speaks for Itself	263
	E. The Smoking Gun Exhibit	263

Contents xi

	F. Effective Evidence Through Overheads	264
	G. Site Visit—Yes or No?	264
	H. Using Depositions	265
	I. Rebuttal	265
V.	Attorney Behavior	265
	A. Your Own	265
	B. Credibility of the Attorney Is Paramount	266
	C. Dealing with the Overly Aggressive Attorney	266
	D. The Delaying Attorney	267
	E. Unrepresented/Underrepresented Parties	267
	F. Selective Use of Objections	267
	G. The Gold in Arbitrator's Questions	268
	H. Use of Junior Attorneys and Legal Assistants	269
VI.	Psyching Out the Arbitrator	269
VI.	What the Client Needs to Know About Arbitration	270
VII.		270
	What Should Always Be Part of Closing Argument Does the Form of Award Influence the Amount	270
IA.		271
v	of the Award? The Poeth against Prints' Comun drawn. Limit the Tonics.	271
X.	The Posthearing Briefs' Conundrum: Limit the Topics	
XI.	Proposed Award Forms	272
01 . 1	3. American Arbitration Apubeousily Interitishand	
Chapter 1		
The Awa		273
	gwalson, Jr.	
90E I.	Potential Arbitrators Must Review Dispute Resolution	0.41
	Provisions Prior to Accepting an Appointment	273
II.	If the Appointment Is Accepted, the Arbitrator	
	Should Address Award Issues Early	274
III.	Interim, Interlocutory, and Partial Final Awards	276
	A. Lack of Uniformity	276
	B. Finality	278
	C. Ripeness	279
	D. Conclusion	279
IV.	Concluding the Hearing	280
V.	Interest, Attorney's Fees, and Costs	282
VI.	Remedies	284
VII.	Preparation of Award	286
VIII.	Estoppel and Res Judicata	289
IX.	Conclusion	290
Chapter 1	3 No enterest Changing the first state for the Acad the A	
	ard Procedures	291
	schitz and Scott D. Burke	
	Introduction	291
II.	Confirming an Award	291
11.	A. Federal Standards and Procedures	292
	Where to File for Confirmation	292
	2. When to File for Confirmation	293
	2. WHERE TO THE TOT COMMITMENTON	2)0

CONTENTS

		3. Additional Considerations About Service	
		of Process	294
		4. Federal Confirmation Process	294
		B. State Standards and Procedures	295
		C. Organizational Considerations	296
	III		296
		A. Federal Standards and Procedures	296
		Evident Material Miscalculations	297
		2. Evident Material Mistakes	297
		3. Arbitrator Awarded Upon a Matter Not Submitted	299
		4. Awards Imperfect in Matter of Form	299
		5. An Alternative Method to Correction Utilizing	
		the Federal Rules of Civil Procedure	299
		B. State Standards and Procedures	301
		C. Organizational Standards	302
	IV.	Vacating an Arbitration Award	304
		A. Federal Standards and Procedures	304
		1. Manifest Disregard	304
		2. Corruption, Fraud, or Undue Means	306
		3. Arbitrator Bias or Corruption	306
		4. Arbitrator Misconduct	307
		5. Failure to Make a Mutual, Final, and Definite	007
		Award	308
		6. Time Limits	308
		B. State Standards and Procedures	309
		C. Organizational Considerations	310
	V.	Appealing an Arbitration Award	311
		A. Federal Standards and Procedures	311
		B. State Standards and Procedures	311
		C. Organizational Considerations	311
	VI.	Confidentiality Considerations	312
		A. Federal Standards and Procedures	312
		B. State Standards and Procedures	313
		C. Organizational Considerations	313
	VII.	Conclusion Conclusion	314
01			TV 238
	pter 1		
		onal Arbitration	315
Jonr		linchey months and a month of the second of	
	1.	Distinctive Aspects of International Arbitration	315
	II.	The Agreement to Arbitrate International Disputes	319
		A. Basic Requirements	
		B. Writing Requirement	
		C. Capacity and Authority of Parties to Agree	320
		D. Viability of Arbitration Agreement	321

Contents xiii

	E. Defined Legal Relationship	321
	F. Dispute Subject to Arbitration	322
	G. Drafting Considerations	322
	H. Institutional and Form Agreements	324
III.	Legal Framework of International Construction	
	Arbitrations	326
	A. New York Convention	327
	B. Investment Treaties	329
	C. "Seat" of the Arbitration	329
	D. Arbitral Tribunal	331
	E. Substantive Law Chosen by the Parties	332
	F. Technical Standards	334
	G. Arbitration Rules	335
	H. Guidelines and Protocols	335
IV.	Initiating the Arbitral Proceeding	335
	A. Institutional and Ad Hoc Arbitrations	335
	B. International Arbitral Institutions	337
	1. Overview	337
	2. International Chamber of Commerce (ICC) Court	
	of Arbitration	339
	3. American Arbitration Association/International	
	Centre for Dispute Resolution (AAA/ICDR)	340
	4. London Court of International Arbitration (LCIA)	340
	5. International Centre for the Settlement of	
	Investment Disputes (ICSID)	341
	C. Initial Arbitral Pleadings	342
	1. Request for Arbitration	342
	2. Response to Request for Arbitration	343
	D. Fees and Costs	344
	1. Institutional Fee Scales	344
	2. Negotiating Arbitrator Compensation	345
	E. Interim Relief from the Tribunal	346
	1. Overview	346
	2. Local Legislation	346
	3. Arbitral Rules	347
	4. Local Courts	347
Mes	5. Emergency Relief Before Tribunal Is Formed	348
V.		349
	A. Arbitration Agreement and Institutional Rules	349
	B. Number of Arbitrators	350
	C. Neutrality, Independence, and Impartiality	351
	D. Other Desirable Qualifications	352
	E. Aibitutof Biscosure Requirements	353
	F. Inquiries and Investigation	355
	G. Challenges to Arbitrators	357

xiv CONTENTS

VI.	Conduct of the Arbitral Proceedings	358
	A. Preliminary Procedural Conferences	358
	B. Pleadings and Prehearing Procedures; in General	360
	1. Counterclaims	361
	2. Cross-Claims	362
	3. Amendments	362
	4. Common and Civil Law Perspectives on Pleading	362
	C. Terms of Reference	363
	D. Timetable and Schedule	364
	E. Motions and Applications to Tribunal	365
	F. Disclosure, Exchange of Evidence and Discovery	366
	1. In General	366
	2. Institutional Rules	367
	3. Electronically Stored Information (ESI)	368
	4. National Laws	370
	5. Summary	370
	G. Tribunal and Party-Appointed Experts	370
	H. Conducting the Hearing	373
	1. In General	373
	2. Due Process and Procedures	374
	3. Hearing Location	374
	4. Attendees and Privacy	375
	5. Rules of Evidence	375
	6. Common Law and Civil Law Approaches to Evidence	376
	7. Burden of Proof	
		377
	8. Objections to Evidence	377
	9. Opening Statements 10. Order of Evidence	378
		378
	11. Witness Evidence	379
	12. Written Witness Statements	379
	13. Oral Statements	380
	14. Managing Expert Evidence	380
	15. Direct Examination	381
	16. Cross-Examination	383
	17. Sequestration	383
	18. Documentary Evidence	384
	19. Time Management	386
	20. Recording Evidence	387
	I. Posthearing Matters	388
	1. Arguments and Closing Submissions	388
	2. Closing the Record	389
	3. Tribunal Deliberations	390
VII.	Fast-Track International Construction Arbitrations	391
	A. In General	391
	B. Representative Rules	392
	C. Cost-Benefit Analysis	393

Contents xv

429	VIII.	Arbitral Awards	394
		A. Basic Requirements	394
		B. Rationale for Basic Requirements	395
		C. Additional Requirements and Good Practice	395
	IX.	Post-Award Relief from Awards	398
		Summary—the Future	400
		5. Ability to Develop Relationships with Decision	
Chap	oter 1		
Arbi	itrate	or Ethics supposed has asset has lead Wat williday a	401
Jame	s R.	Madison	
	I.	Introduction	401
	II.	Pre-Appointment Obligations	401
	III.	Appointment Acceptance Ethics: Disclosure	402
		A. General	402
		B. Case Developments	402
		1. Federal something a transfer of the state	402
		2. State	403
		C. Statutes system syst	403
		1. California	403
		2. Other States	407
		D. AAA/ABA Code of Ethics	410
	IV.	Ethical Obligations During Service	411
	V.	Postservice Obligations	413
	VI.	Party-Appointed Arbitrators	414
Chap			
		tion to Mediation	415
Alan		Iarris and Kelly M. Matayoshi	quitt.
	I.	What Is Mediation?	415
	II.	Is Mandatory Mediation Helpful and/or Appropriate?	417
		When Should You Mediate?	419
		Mediator Neutrality and Disclosures	420
		Mediation Agreement	422
	VI.	Conclusion	425
		7A. Neoparticipating Party, Multiparty Mediatiereso.	
		liator	427
Adri		Bastianelli III and Robert A. Rubin	
	I.	Role of the Mediator	427
		A. Authority	427
		B. Rules and Procedures	427
		C. Privacy modestlavil see a substitution	428
		D. Ex Parte Communications	428
	II.	Mediator's Skills	428
		A. A Mediator's Skills as Distinguished from Those	
		of a Litigator, Judge, Arbitrator, or DRB Member	428

		B. Mediators Skill Sets	429
		1. Ability to Analyze Facts, Law, and People Quickly	429
		2. Active Listening Skills	430
		3. Sensitivity to the Psychology of Others, Hidden	
		Agendas, and Below-the-Surface Issues	430
		4. Engender Trust, Confidence, and Respect	430
		5. Ability to Develop Relationships with Decision	
		Makers	430
		6. Ability to Withstand Stress and Pressure	431
		7. Perseverance	431
		8. Good Negotiator	431
		9. Neutrality	431
		10. Other Personal Attributes	432
		C. Mediation Training and Experience	432
		D. Legal Training and Experience	432
		E. Construction Training and Experience	433
	III.	Mediator's Style	433
		A. Facilitative	433
		B. Evaluative	433
		C. Combination Facilitative and Evaluative	433
		D. Combination Aggressive and Laid-Back	434
	IV.		434
	V.	How and Where to Find a Mediator	434
	VI.	Questions to Ask a Prospective Mediator	435
	VII.	Disclosures	438
	VIII.	Conclusion	439
Cha	pter 1	8 The state of the	
		iation Phase	441
Ster	e Nels	son was the many and and and all another than a post of many at	
	I.	Preparing the Client for Mediation—Explain	
		the Process of Mediation	441
		A. The Decision to Mediate	441
		B. The Commitment to Mediate	442
		C. Timing of Mediation	442
		D. Locale	443
		E. Attendance by Decision Makers and Stakeholders	444
		F. Confidentiality	445
		G. The Opening Session	445
		1. The Case for the Opening Session	446
		2. The Case for Early Party Separation	446
		H. Serious Case Evaluation	447
		1. Economic Analysis	447
		2. Know Your BANTA	449
		I. A Discussion on the Possible Outcomes of a Mediation	
		Session	450

Contents	xvii

		J. Begin to Develop Settlement Options and Potential	
		for Creative Solutions	451
		K. Discuss Specific Settlement Terms	451
	II.	Determine if Additional Information Exchanges Are	
		Necessary or Desirable	452
	III.	Plan Your Two-Minute Drill	454
		1. Model Standards of Conducts is significant blue rate.	
Chap	ter 1	9 2. Uniform Mediation Act	
		liation	457
		polito and Laurence R. Phillips	
		Mediator's Opening Remarks and Joint Session	
		Presentations	457
		A. Mediator's Opening Remarks	457
		B. Joint Session	458
		1. Pros	458
		2. Cons	459
		3. Use of Technology and Demonstrative Exhibits	
		During Joint Sessions	460
		4. How Much Is Too Much?	460
		C. Who Should Be Present?	460
		Participants with Settlement Authority	460
		2. Use of Experts	461
		3. Managing Emotions and Expectations	461
	II.	Private Sessions (Caucus)	462
	11.	A. General	462
		B. Negotiations, Strategy, and Tactics	462
		1. Opening Offers	463
		2. Counteroffers	463
		3. Candor, Confidentiality, and Trustworthiness	464
	III.	Closing the Deal	464
		A. Tips to Successful Closure	464
		B. Written Versus Oral Agreements	465
		C. Enforceability	465
	IV.	Settlement Tools Dealing with Impasse	465
		Multiparty Mediation	467
		A. Nonparticipating Party; Multiparty Mediations	467
		B. Mediations within Mediations	468
		C. Public Agencies	468
		D. Private Owners	468
		1. Claimants	468
		2. Respondents	469
		E. Prime Contractors	469
		1. Claimant colaubaco	469
		2. Respondent	469
		F. Subcontractors	469
		G. Designers	470

		H. Insurance Carriers	470
		I. Sureties	470
	VI.	Conclusion	47
			11
Cha	pter 2	Mercessary on Desirable surface who would tark as a reservoid	
Spe	cial	Issues in Mediation	473
		Kester and Krista L. Kester	
		Introduction	473
	II.	Enforcing Mandatory Mediation Provisions	474
		A. Mediation As a Condition Precedent to Dispute	1 + 450
		Proceedings	474
		B. Methods of Fulfilling Mediation Requirements	475
		C. Futility As an Excuse for Failure to Mediate	476
	III.		477
		A. Background	477
		B. Sources of Good-Faith Requirements	478
		C. Contractual Remedies for Failure to Mediate	1,0
		in Good Faith	480
	IV.	Confidentiality of the Mediation Process and	100
		Communications	481
		A. Background and Purposes of Confidentiality	101
		in Mediation	482
		B. Sources and Scope of Confidentiality Requirements	483
		1. The Privilege Approach to Protecting the	100
		Confidentiality of the Mediation Process	485
		2. Broad-Based Confidentiality Requirements	485
		3. Tensions Between Confidentiality and Other	100
		Interests	486
		4. Exceptions to Confidentiality Requirements	487
		5. Remedies for Breach of Confidentiality	10,
		Requirements	492
		6. Use of Settlement Agreement (Oral or Written)	493
	V.	Mediation Programs and Providers	495
		A. Court and Court-Annexed Mediation Programs	495
		1. Federal District Courts	496
		2. Federal Courts of Appeal	498
		3. State Courts	498
		B. Mediation Outside Court-Annexed Programs	498
		1. Dispute Resolution Offices Connected to the	1,0
		State or Local Courts	498
		2. Private Mediation Providers	499
		3. Selection of a Mediator in Construction Disputes	500
	VI.		503

Contents xix

Chap	ter 2	Contract Administration, Requests for	
Ethi	cs in	Mediation	505
Mark	J. H	leley and those bearing of the second set as second set A III	
	I.	Determination of Standards for Mediator Ethics	506
		A. Does a Mediator Practice Law?	506
		B. Sources of Ethical Standards for Mediators	509
		1. Model Standards of Conduct for Mediators	509
		2. Uniform Mediation Act	510
		3. Provider Organizations	510
		4. State and Federal Statutes, Agency Rules	
		and Regulations, and Local Court Rules	511
	II.	Generally Recognized Ethical Standards	511
		A. Party Self-Determination	512
		B. Impartiality and Neutrality	516
		1. Conflicts of Interest	516
		2. Mediator Bias	518
		3. Conduct That Casts Doubt on the Mediator's	
		Impartiality and Neutrality	518
		C. Confidentiality	519
		D. Competency	522
		E. Quality of Process	522
		F. Advertising and Solicitation	523
		G. Fees	524
		H. When Should a Mediator Withdraw from a Mediation?	524
	III.	The Ethical Considerations for Lawyers Representing	
		Parties in Mediation	526
		A. Mediation Participation Must Be in Good Faith	527
		B. Negotiation Tactics	528
		C. Interference with the Settlement	530
	IV.	Conclusion	530
562		L. Appealing the Decision equitanoitals?	
Chap			
		ive Dispute Resolution	080
		al Government Contracting	531
James			
	I.	The Government and the Prime Contractor	531
		A. The Statutory Basis	532
		1. Alternative Dispute Resolution Act of 1990	532
		2. Administrative Dispute Resolution Act of 1996	532
		B. Regulatory Application	536
		C. Agency Implementation	538
		D. ADR Use in Government Contracts Forum	539
		1. Bid Protests	539

		2. Contract Administration, Requests for	
		Equitable Adjustment, Claims and Appeals	540
	II.	ADR Between the Prime and Subcontractor	543
		A. Applicable Law	544
		B. What Is Federal Procurement Law?	544
		C. Why Would Two Private Parties Choose Federal	
		Procurement Law?	546
		D. The Arbitration Decision/Mediation Statement	
		in Disputes Between Federal Prime and Subcontractors	546
Cha	pter 2	23 Process seeks Truck kood bas esoitslugest bas	
Init	ial D	Pecision Maker (IDM)	549
Suza	anne I	H. Harness	
	I.	The Architect as Initial Decision Maker	549
	II.	Industry Parallels	553
		A. The Contracting Officer's Decision	553
		B. The Engineer's Decision	555
	III.	Introducing a Third-Party Neutral into AIA	
		Documents	555
		A. A201-2007: The Initial Decision Maker (IDM)	556
		B. Selecting the IDM	558
		C. IDM Agreement	558
		D. Authority of the IDM	559
		E. Responding to the Claim	559
		F. Content of the Decision	560
		G. Communicating with the Parties	560
		H. Ethical Concerns	560
		I. Protecting the IDM	561
		J. A Party's Response to the Decision	561
		K. Initial Decision Is Final and Binding	562
		L. Appealing the Decision	562
	IV.	Alternatives to the Initial Decision	563
		A. Stepped Negotiations	563
		B. Dispute Review Board	563
		C. Dispute Adjudication Board	564
		D. Standing Neutral	564
		E. Compare Alternatives	564
		1. Speed of Decision	564
		2. Admissibility	565
		3. Cost Effectiveness	565
	V.	Industry Acceptance of the IDM in AIA	
		Contracts	565
	VI.	Conclusion	566

Contents xxi

Chap	oter 2	C. Owner's Options for Atternate Dispute Resolution 4		
Dis	pute	Review Boards and Other Forms of Construction ADR	5	69
Adri	ian L.	Bastianelli III and Robert A. Rubin		
	I.	What Is a DRB?	5	69
	II.	The Dispute Resolution Board Foundation	5	70
	III.	Selection of DRB Members	5	71
		A. Methods of Selection of DRB Members	5	71
		B. Complete Neutrality	5	71
		C. Use of Lawyers as DRB Members	5	71
	IV.	Regular Meetings and Site Visits	5	72
	V.	DRB Hearings	5	73
	VI.	Findings and Recommendations	5	74
	VII.	The Informal or Advisory DRB Process	5	75
986	VIII.	Drafting the DRB Clauses and Agreements	5	75
	IX.	Removal or Termination of a DRB Member	5	76
	X.	Subcontractor or Design Professional Claims	5	77
		Cost of the DRB		78
	XII.	Other Forms of ADR	5	78
		A. Early Neutral Evaluation	5	78
		B. Standing or Project Neutral	5	79
		C. Minitrial	5	80
100	XIII.	Conclusion	5	82
	oter 2			
		tion ADR from the Owner's Perspective	5	83
Debo		Bovarnick Mastin		
	I.	Owner's Objectives		83
		A. The Endgame—Predictable Time, Cost, and Quality	5	83
			_	
		B. The Means to the End—Communications and Civility	58	84
		B. The Means to the End—Communications and CivilityC. Frosting on the Cake—Enhancing Business		84
		B. The Means to the End—Communications and CivilityC. Frosting on the Cake—Enhancing BusinessRelationships		
		 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate 	58	84 85
		 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process 	58	84
	II.	 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project 	56	84 85 86
	II.	 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance 	56 56	84 85 86 86
	II.	 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance A. Partnering and Facilitation 	56 56 56	84 85 86 86 87
	II.	 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance A. Partnering and Facilitation B. Dispute Review Boards 	56 56 56 56	84 85 86 87 87
	II.	 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance A. Partnering and Facilitation B. Dispute Review Boards C. Standing Neutral 	56 56 56 56 56	84 85 86 87 87 88
		 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance A. Partnering and Facilitation B. Dispute Review Boards C. Standing Neutral D. Dispute Adjudication Board 	56 56 56 56 56	84 85 86 87 87
	II.	 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance A. Partnering and Facilitation B. Dispute Review Boards C. Standing Neutral D. Dispute Adjudication Board Additional ADR Processes Available to Owner After 	56 56 56 56 56 56	84 85 86 87 87 88 89
		 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance A. Partnering and Facilitation B. Dispute Review Boards C. Standing Neutral D. Dispute Adjudication Board Additional ADR Processes Available to Owner After Project Completion 	56 56 56 56 56 56 56	84 85 86 87 87 88 89
		 B. The Means to the End—Communications and Civility C. Frosting on the Cake—Enhancing Business Relationships D. Evaluating the Merits or Effectiveness of an Alternate Dispute Resolution Process ADR Options Available to Owner During Project Performance for Dispute Mitigation and Avoidance A. Partnering and Facilitation B. Dispute Review Boards C. Standing Neutral D. Dispute Adjudication Board Additional ADR Processes Available to Owner After 	56 56 56 56 56 56 56	84 85 86 87 87 88 89

xxii CONTENTS

		C. Owner's Options for Alternate Dispute Resolution	
		Prior to Trial—Early Case Evaluation and Nonbinding	
		Arbitration	593
	IV.	Owner's Perspective on ADR Considerations Regarding	
		Subcontractor Claims	593
	V.	Conclusion	594
Ch	apter 2	A. Methods of Selection of DKB Messbersteinstrand	
			-0-
		ign Professional's Perspective on ADR	595
		Holt, Kevin P. Walsh, Carrie L. Okizaki,	
Raj		D. Jones, and Cornelius DuBois	
		Introduction ADD Provide the P	595
	II.	the Bengh	
		Professional's Written Agreement	596
		A. The Specific Facts and Circumstances Surrounding	
		the Project or Contract	598
		B. The Types of Claims Most Commonly Made By	
		and Against Design Professionals	601
		C. The Terms of the Design Professional's Liability	
		Insurance Policies	604
	III.	The Design Professional's Role in Resolving Disputes	
		Among Project Participants During Construction	604
	IV.	Crafting the Language of the ADR Provision	607
		A. Negotiation, Mediation, and Arbitration from the Design	
		Professional's Perspective	607
		B. "Stepped" ADR Clauses from the Design Professional's	
		Perspective	609
		C. ADR Language Used in Owner-Design Professional Form	EKI
		Agreements	610
		1. The AIA Document B101-2007 Approach to Dispute	010
		Resolution	611
		2. The ConsensusDocs 240 Approach to Dispute	OII
		Resolution	613
		3. The EJCDC E-500 Approach to Dispute Resolution	615
		D. ADR Language to Be Considered for Use in the Design	015
		Professional/Client Agreement	617
		Prevailing Party Clauses	
		2. Waiver of Consequential Damages Clauses	618
			620
	V	3. Clauses Specifying the Arbitrator(s) of the Dispute	621
	٧.	Negotiating the Desired Language into the Design	(00
	VII	Professional's Written Agreement	622
	VI.	Project Documents: The Design Professional's Best Asset	
		for Preventing Construction Disputes and Prevailing	
	X 777	in Them	623
	VII.	Conclusion	627

Contents xxiii

ADR from the Contractor's Perspective Allen L. Overcash I. Introduction II. The Rise of the Strong Sub/Supplier III. The Modern Position of the Prime Contractor IV. How Strong Sub/Suppliers Affect the Contractor's ADR Procedures V. The Pass-Through Claim Process VI. Managing Claims Ahead of the Liquidation Agreement VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law VIII. Arbitration and Mechanic's Lien Law VIII. Arbitration and Tinitial Pactaty Legges	Chi	apter 2	Zionalingoolie Ana saguhagan kana khasalianaya Restuga Craix	
I. Introduction II. The Rise of the Strong Sub/Supplier III. The Modern Position of the Prime Contractor IV. How Strong Sub/Suppliers Affect the Contractor's ADR Procedures V. The Pass-Through Claim Process VI. Managing Claims Ahead of the Liquidation Agreement VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 622 633 633 633 633 634 635 635 635	AL	OR fro	m the Contractor's Perspective	629
II. The Rise of the Strong Sub/Supplier III. The Modern Position of the Prime Contractor IV. How Strong Sub/Suppliers Affect the Contractor's ADR Procedures V. The Pass-Through Claim Process V. The Pass-Through Claim Process VI. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings G. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 633 643 644 645 645 645 645 645	All	en L. (Overcash	
III. The Modern Position of the Prime Contractor IV. How Strong Sub/Suppliers Affect the Contractor's ADR Procedures V. The Pass-Through Claim Process VI. Managing Claims Ahead of the Liquidation Agreement VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings B. Other Proceedings Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 633 648 644 647 648 649 649 649 640 640 640 641 640 641 641 645 645 645 647 647 647 648 649 649 649 649 649 640 649 649 649 649 649 649 649 649 649 649		I.	Introduction	629
IV. How Strong Sub/Suppliers Affect the Contractor's ADR Procedures V. The Pass-Through Claim Process VI. Managing Claims Ahead of the Liquidation Agreement VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings B. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 633 644 645 646 645 645 645 645		II.	The Rise of the Strong Sub/Supplier	630
Procedures V. The Pass-Through Claim Process VI. Managing Claims Ahead of the Liquidation Agreement VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings B. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 6363 637 648 649 649 649 649 649 649 649		III.	The Modern Position of the Prime Contractor	632
V. The Pass-Through Claim Process VI. Managing Claims Ahead of the Liquidation Agreement VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings B. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 638 649 640 644 645 645 645 645 645 645 647 645 647 645 647 647 648 647 648 647 648 647 648 647 648 647 648 647 649 648 647 648 647 648 647 648 647 649 649 649 649 649 649 649 649 649 649		IV.	How Strong Sub/Suppliers Affect the Contractor's ADR	
VI. Managing Claims Ahead of the Liquidation Agreement VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings G. Other Proceedings A. Arbitration Proceedings B. Other Proceedings G. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction G. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses G. Subcontractor and Consolidation and Joinder Issues G. Subcontractor and Consolidation and Joinder Issues G. Subcontractor and Consolidation and Joinder Issues G. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law G72			Procedures not more and a second of the seco	633
VII. Managing Claims in an ADR Procedure A. Arbitration Proceedings B. Other Proceedings G. WIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 648 645 646 647 648 648 648 649 648 649 649 649 649 649 649 649 649 649 649		V.	The Pass-Through Claim Process	635
A. Arbitration Proceedings B. Other Proceedings G. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 645 645 645 645 647 648 648 647 648 649 647 648 648 649 649 649 649 649 649 649 649 649 649				639
A. Arbitration Proceedings B. Other Proceedings G. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 645 645 645 645 647 648 648 647 648 649 647 648 648 649 649 649 649 649 649 649 649 649 649		VII.	Managing Claims in an ADR Procedure	640
B. Other Proceedings VIII. Conclusion Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 645 646 647 648 648 648 649 649 649 649 649 649 649 649 649 649				640
Chapter 28 Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 645 645 647 648 647 648 648 648 648 649 649 649 649				642
Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 645 647 647 648 647 648 648 648 647 648 648 648 649 648 649 649 649 649 649 649 649 649 649 649		VIII.	Conclusion	644
Construction ADR Processes from the Subcontractor's Perspective David R. Hendrick I. Introduction A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 645 647 647 648 647 648 648 648 647 648 648 648 649 648 649 649 649 649 649 649 649 649 649 649	Chu	apter 2	8	
David R. Hendrick I. Introduction General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses GENUE Subcontractor and Consolidation and Joinder Issues FIV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 645 647 648 648 648 649 649 649 649 649 649 649 649 649 649				645
II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses GETIV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers GETIV OF Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law				
II. General Subcontracting Considerations Regarding ADR A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses GETIV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers GETIV OF Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law		I.	Introduction	645
A. Compare and Contrast Standard Form Subcontract ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses GS7 IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers Of Suppliers Fig. 164 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law		II.	General Subcontracting Considerations Regarding ADR	647
ADR Treatment and Options B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses GETIV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law GETICALE				
B. Incorporation by Reference and "Conduit" Clauses C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses G56 III. Subcontractor and Consolidation and Joinder Issues G57 IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers G64 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law				648
C. Unilateral Election of ADR Process by Prime Contractor D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses G56 III. Subcontractor and Consolidation and Joinder Issues G57 IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers G64 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law				
D. Binding Effect of an Initial "Decision" Regarding Subcontract Dispute E. Venue and Forum Selection Clauses 656 III. Subcontractor and Consolidation and Joinder Issues 657 IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes 661 A. Severin Doctrine 662 B. Liquidation and Pass-Through Agreement 663 C. Tolling Agreement 663 D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers 664 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds 668 B. Non-Miller Act Payment Bonds 668 C. Performance Bonds 670 C. Performance Bonds 671 D. Lien Discharge Bond 672 VII. Arbitration and Mechanic's Lien Law				
Subcontract Dispute E. Venue and Forum Selection Clauses III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 656 657 658 659 669 660 660 661 663 663 664 665 665 665 666 667 667 667				
E. Venue and Forum Selection Clauses 656 III. Subcontractor and Consolidation and Joinder Issues 657 IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes 661 A. Severin Doctrine 662 B. Liquidation and Pass-Through Agreement 663 C. Tolling Agreement 663 D. Join Claim Cooperation and Confidentiality Agreement 70 V. Dispute Resolution with "Downstream" Subcontractors 70 71 72 73 74 75 76 76 77 76 77 77 78 78 78 78 78 78 78 78 78 78 78				656
III. Subcontractor and Consolidation and Joinder Issues IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers Fig. 1664 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 657				656
IV. Considerations Regarding Subcontractor "Pass-Through" Claims and Disputes 661 A. Severin Doctrine 662 B. Liquidation and Pass-Through Agreement 663 C. Tolling Agreement 663 D. Join Claim Cooperation and Confidentiality Agreement 70 V. Dispute Resolution with "Downstream" Subcontractors 70 or Suppliers 664 VI. The Subcontractor and Arbitration of Surety Bond Claims 667 A. Miller Act Payment Bonds 668 B. Non-Miller Act Payment Bonds 670 C. Performance Bonds 671 D. Lien Discharge Bond 672 VII. Arbitration and Mechanic's Lien Law 672		III.	Subcontractor and Consolidation and Joinder Issues	657
Claims and Disputes A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers Of Suppliers Of Suppliers Of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds C. Performance Bonds D. Lien Discharge Bond Of Surety Bond Of Surety Bond Claims Of		IV.		
A. Severin Doctrine B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers OI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 662 663 663 664 665 665 6667 6667 6670 6670 671 672 672				661
B. Liquidation and Pass-Through Agreement C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers 664 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 663 664 665 6664 6670 6670 6670 6670 6671 6672				662
C. Tolling Agreement D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers 664 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 663 664 665 6670 6671 6672				
D. Join Claim Cooperation and Confidentiality Agreement V. Dispute Resolution with "Downstream" Subcontractors or Suppliers 664 VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 663 664 665 6667 6668 6670 6670 670 671 672				663
V. Dispute Resolution with "Downstream" Subcontractors or Suppliers 664 VI. The Subcontractor and Arbitration of Surety Bond Claims 667 A. Miller Act Payment Bonds 668 B. Non-Miller Act Payment Bonds 670 C. Performance Bonds 671 D. Lien Discharge Bond 672 VII. Arbitration and Mechanic's Lien Law 672			0 0	663
or Suppliers 664 VI. The Subcontractor and Arbitration of Surety Bond Claims 667 A. Miller Act Payment Bonds 668 B. Non-Miller Act Payment Bonds 670 C. Performance Bonds 671 D. Lien Discharge Bond 672 VII. Arbitration and Mechanic's Lien Law 672		V.		
VI. The Subcontractor and Arbitration of Surety Bond Claims A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 667 668 670 671 672				664
A. Miller Act Payment Bonds B. Non-Miller Act Payment Bonds C. Performance Bonds D. Lien Discharge Bond VII. Arbitration and Mechanic's Lien Law 668 670 671 672		VI.		667
B. Non-Miller Act Payment Bonds 670 C. Performance Bonds 671 D. Lien Discharge Bond 672 VII. Arbitration and Mechanic's Lien Law 672				668
C. Performance Bonds 671 D. Lien Discharge Bond 672 VII. Arbitration and Mechanic's Lien Law 672				
D. Lien Discharge Bond 672 VII. Arbitration and Mechanic's Lien Law 672				
VII. Arbitration and Mechanic's Lien Law 672				
		VII.		
VIII. Albitiation and Timu-Larry issues		VIII.	Arbitration and Third-Party Issues	675
IX. Subcontractor Dispute Resolution, IPD, and Lean				
Construction Delivery Systems 675				675

	X.	Dispute Review Boards and Procedures and Subcontractors	677
	XI.	Mediation and the Subcontractor	681
	XII.	Conclusion	682
Cha	pter 2	Il. The Rise of the Strong Sub/Supplier and Dudward odu 9	
The	Bus	iness of Being a Construction Neutral	685
Chr	isti L.	Underwood Underwood	
	I.	Introduction	685
	II.	Business Organization and Goals	685
		A. Solo Practice or Group	685
		B. ADR Focus Area(s)	686
		C. Time Commitment, Financial Resources	687
	III.	Basic Mechanics	688
		A. Experience, Training, Panel Rosters	688
		B. Licensing, Insurance, Bills, and Invoices	689
		C. Office Location, Conference Rooms	689
	IV.	Marketing and Public Relations	690
		A. Advertising: Yes or No?	690
		B. Professional Association Memberships	691
		C. Social Media, Websites	691
	V.	Special Needs of an ADR Practitioner	692
		A. Conflicts Database, Disclosures	692
		B. Engagement Agreements and Immunity	693
	VI.	How Do I ?	694
		A. Get Appointed to Cases	694
		B. Stay Current with Best Practices	695
	VII.	Lessons Learned	696
		A. Observations of Successful Construction ADR Neutrals	696
		B. The Life/Work Balance	696
		C. Don't Fear Change	696
Inde	x		699
	e of C	ases assessment of the second	729
	-		