



# Rules For Administered Dispute Prevention and Management Boards for Commercial Transactions

Effective October 2023

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## **INTRODUCTORY NOTE:**

The International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Dispute Prevention and Management Boards for Commercial Transactions (“DP&M Board Rules”) are intended for parties that desire an accelerated, streamlined early dispute avoidance and mitigation process designed to result in consensual resolution of unanticipated issues and disputes, and, if unsuccessful, then the delivery of a decision within a short, specified period during the progress of a long term commercial Endeavor.<sup>1</sup> These DP&M Board Rules are provided as guidance to the parties to incorporate into their commercial Endeavor Agreement (“Agreement”). They do not supersede legal norms, governmental rules and regulations, or judicial precedent. The parties to the Agreement are free to modify these DP&M Board Rules to reflect their intentions and circumstances. Parties should seek legal guidance before incorporating these DP&M Board Rules in the Agreement.

The DP&M Board Rules were designed to be suitable for Endeavors regardless of their complexity or the amount in dispute.

### **Guidance**

Interspersed in these DP&M Board Rules, CPR has prepared non-binding Guidance that should be consulted when applying these DP&M Board Rules.

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<sup>1</sup> As used in these DP&M Board Rules, “Endeavor” shall be understood to encompass the entire scope of the venture, enterprise, project, or transaction under the Agreement; the intent is to encompass as broadly as possible the realization of the objective of the commercial transaction or the relationship of the parties under the Agreement. See Rule 1.4 below.

## **CPR Rules for Administered Dispute Prevention and Management Boards (2023)**

### **Rule 1: Scope of Application**

- 1.1** Where the parties to a contract have provided for a board under CPR's DP&M Board Rules (the "Board"), they shall be deemed to have made these DP&M Board Rules a part of their agreement, except to the extent they have agreed in writing to modify these DP&M Board Rules.
- 1.2** The parties shall be presumed to have agreed to the version of these DP&M Board Rules in effect at the time of the commencement of the Agreement.
- 1.3** By agreeing to these DP&M Board Rules, a party commits to cooperate with the Board and the other party to conduct the Board proceedings in an efficient manner. The parties agree that the Board shall take the parties' compliance with this obligation into account when apportioning costs under these DP&M Board Rules.
- 1.4** As used in these DP&M Board Rules, "Endeavor" shall be understood to encompass the entire scope of the venture, enterprise, project, or transaction under the Agreement; the intent is to encompass as broadly as possible the realization of the objective of the commercial transaction or the relationship of the parties under the Agreement.
- 1.5** The Board shall interpret and apply the DP&M Board Rules insofar as they relate to the Board's powers and duties. When there is more than one member on the Board and a difference arises among them concerning the meaning or application of the DP&M Board Rules, that difference shall be decided by a majority vote. All other DP&M Board Rules shall be interpreted by CPR Dispute Resolution Services LLC.

### **Rule 2: Purpose and Operations of Board - Dispute Avoidance**

- 2.1** The purpose of this dispute management process is primarily to assist in the prevention and mitigation of disruptions to the Endeavor as a result of disputes (i) arising between the parties to the Agreement, or (ii) stemming from external events that affect the relationship between the parties, or that affect the timely completion of the Endeavor, and secondarily to assist in the expeditious resolution of disputes and claims between the parties arising out of the Agreement. As used in this Section, the term "Agreement" is understood to mean the agreement between the parties establishing the rights and responsibilities of each party to jointly participate in a commercial transaction which commits the parties to participate in an Endeavor. The intent of the establishment of the Board is to facilitate contemporaneous agreement as to the responses and responsibilities of the parties regarding issues arising during the progress of the work on the Endeavor by providing recommendations (see Rule 5.1) to the parties, and if agreement cannot be quickly reached upon such recommendations, then to fairly and impartially consider disputes placed before it and to provide binding written recommendations (see Rule 5.2) for resolution of these disputes to disputing parties.

Unless the parties agree otherwise in writing, all recommendations of the Board with respect to disputes before them are provisionally binding on the parties during the term of the Agreement; provided, however, that if one party gives timely written notice of its objection as provided in Rule 5, the written recommendation shall become non-binding on the parties at the termination of the Agreement and shall be subject to binding arbitration under the appropriate CPR Administered Arbitration Rules then in effect ("the CPR Arbitration Rules"). To the extent no timely written notice of objection is made to the written recommendations of the Board, such recommendation shall be final and binding only during the term of the Endeavor, and cannot be challenged in arbitration after the proceeding. Any issue of noncompliance with a recommendation may be referred to arbitration as provided below. If the parties so desire, a written recommendation may be embodied in a Consent Award through the Arbitration process, provided that a sole arbitrator will be selected. For the avoidance of doubt, submission of a disputed matter to the Board by a party for discussion at a regular meeting of the Board over the course of the Agreement is a condition precedent to that party filing suit or to filing a demand for arbitration with regard to that specific disputed matter. Should a party wish to seek a binding determination by arbitration, they can initiate an arbitral proceeding by consulting the CPR Arbitration Rules.

**Guidance:** *The parties may instead agree that the recommendations of the Board will be binding. Alternatively, the parties may agree that recommendations of the Board involving disputes that have a value less than a specified threshold amount will be binding and may be embodied in a Consent Award pursuant to the arbitral process herein, provided that a sole arbitrator shall be selected.*

**Guidance:** *If the parties are wary of the impact a binding recommendation may entail to the Agreement, they may opt for non-binding recommendations only, understanding that such recommendations do not have contractual binding effect on the parties.*

**2.2** After appointment of the Board members, the Board and the parties will formulate applicable procedures for operation consistent with these DP&M Board Rules, which will be kept flexible to adapt to changing situations. At a minimum, the procedures will encourage a) the parties to keep the Board informed of ongoing activities and progress under this Agreement by submitting to the Board relevant or requested data; and b) the Board to convene in person or virtually at regular intervals with representatives of the parties, and at times of critical events. The meetings of the Board will be deemed to be confidential settlement negotiations without prejudice to the parties' positions. From time to time, a party may invite a third-party to attend these meetings; absent objection by a party, the third party may attend subject to executing an appropriate confidentiality agreement.

**Guidance:** *In some instances the parties may find that it is helpful to invite a non-party to the Board meetings, subject to their confirmation of the confidentiality requirements of the proceeding and the consent of all parties. By way of example, the non-party invitee could be a lender, a tenant, a significant customer, an indemnitor, or a stakeholder in the Endeavor who will be impacted by the matters to be discussed in the Board meeting, but who is not a direct party to the Agreement.*

### **2.3 Coordination and Logistics; Board Expenses**

The parties will coordinate the operations of the Board. The parties will determine their respective responsibility for the logistics and expenses of Board operations, including the fees and expenses of the Board members and other expenses of the Board. In the absence of any agreement otherwise, the parties will share the fees and expenses of Board operations equally, and if a party fails to pay its share of the Board expenses, the other party or parties may advance the expenses of the Board, request that CPR appoint an arbitrator to allocate costs by way of an arbitral award or disband the Board. Absent full payment of the Board expenses, the Board may terminate its operations.

### **2.4 Time for Beginning and Completion**

Subject to timely payment of its expenses, the Board is to be in operation from the commencement of work on the Endeavor under the Agreement by any party ("Commencement Date") until all Requests for Review submitted prior to the termination or expiration of the Agreement are determined by the Board.

**Guidance:** *The Agreement may provide that the Board is to be in operation upon the selection of fewer than all Board members.*

### Rule 3: Number and Selection of Board Members

**3.1** As soon as practicable after being contacted by a party, CPR shall jointly convene the parties by video conference, telephone, or other means of communication for a pre-selection conference to discuss the selection of the Board member(s) and other administrative matters.

**3.2** The number of Board members shall be in accordance with the agreement of the parties. Absent the parties' agreement on the number of Board members, the Board shall consist of three members, unless otherwise determined by CPR. The factors that may be taken into consideration by CPR include (i) the legal or factual complexity of the transaction; (ii) the total amount at issue in the Agreement; and (iii) differences in nationalities of the parties.

**3.3 Procedures for the Selection of a Sole Board Member.** Where the Board is to consist of a sole member, also known as the Dispute Management Advisor, the parties shall attempt jointly to agree on and designate the member within 15 days of the Commencement Date of the Board/Endeavor.

**3.4** If the parties have not jointly designated a Board member within 15 days of the Commencement Date, CPR shall appoint a Board member in accordance with the List Selection Procedure provided in the CPR Arbitration Rules (Selection Through CPR List Procedure).

**3.5 Procedures for Selection of a Three-Member Board.** Where a Board is to consist of three members, CPR shall appoint the members in accordance with the Screened Selection Procedure provided in the CPR Arbitration Rules (Screened Selection By the Parties). All Board members will be independent, impartial, and neutral in all Board matters. Unless the parties agree otherwise, each member shall have significant experience in the subject matter of the Agreement. Training and experience in mediation, arbitration, dispute board procedures and other dispute resolution and dispute prevention methods are also preferred qualifications for prospective Board members. The members of the Board shall be selected no later than 30 days after the parties have held a conference call with CPR for the selection of the Board members.

**Guidance:**

*1. The rules provide for a board consisting of one or three members. The parties may agree that the Board comprise a different number of members, provided that they agree on a selection method or that the members are jointly selected. Differing experience among the Board members may help expedite discussions of various Endeavor issues that are anticipated to arise and may bring value to the Board process.*

*2. The parties may agree that they prefer an attorney with expertise in dispute management or adjudication to serve as the Chair.*

*3. The parties may agree to jointly select all members of the Board.*

**3.6 Availability.** The Board member(s) designated by the parties or appointed by CPR shall affirm in writing their availability and their willingness and ability to manage the proceedings efficiently.

**3.7 Independence and Disclosure of Relationships.** The Board members designated by the parties or appointed by CPR shall affirm in writing their independence, impartiality and neutrality and shall disclose all professional relationships with the parties that exist at the time of their appointment, existed in the past 5 years, or that arise during the time of their appointment to the Board. Within 10 days of the filing of a disclosure, a party may file an objection to the appointment of a Board member with CPR on the basis of the Board member's lack of independence, impartiality or neutrality. CPR shall determine the objection in accordance with the CPR Challenge Protocol.

## Rule 4: Meetings

**4.1 Initial and Subsequent Meetings.** Within 5 days of its constitution or as soon thereafter as practicable, the Board shall schedule an initial meeting. Subsequent meetings will be regularly held virtually or in-person as set forth below. Each meeting will consist of an informal round table discussion and, if useful, an inspection of the work where applicable. The goal of the roundtable discussion is to identify matters early that might become issues or disputes and find cooperative ways to eliminate or mitigate them. The round table discussion will be attended by party designated representatives and is intended to provide a forum for the parties to resolve current or anticipated issues with the assistance of the Board. If the parties agree, other participants or stakeholders in the Endeavor who are not direct parties to the Agreement may be invited to attend Board meetings; in such instances, the invited participants will be held to the same confidentiality requirements as the parties (including but not limited to those set forth in Rule 2.2) and will be required to comply with the protocols and procedures of the Board.

**Guidance: Site Visits:** *If a site of the work that is the subject of the Agreement exists, the Board members may find it helpful to visit the site of the work that is the subject of the Agreement on a regular basis to keep abreast of ongoing activities and to develop a familiarity of the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed between the parties and the Board. Regarding matters before the Board, it may be advantageous but not necessary for the Board to personally view the site and any relevant conditions. If viewing by the Board would cause delay to the ongoing work of the Agreement, video, photographs, and descriptions of these conditions collected by either or both parties could suffice.*

**4.2 Frequency of Meetings:** Subject to agreement otherwise by the parties in the Agreement, in order for the Board to become familiar with the Endeavor circumstances, it will meet at least once per month. If conditions warrant, the Chair, in consultation with other Board members and the parties, may vary the time between meetings to better serve the parties. The parties may invite the Board to attend regular business meetings attended by executives or managers.

**Guidance:** *Factors to be considered when setting the time between meetings include work progress, occurrence of unusual events and the number and complexity of ongoing or potential issues.*

**4.3 Record of Meetings.** While the Board may take notes or keep other records during the consideration of a Notice of Disagreement (see Rule 5.1), it is not necessary for the Board to keep a formal record. If possible, it is desirable to keep the meetings and hearings completely informal. The proceedings of the Board shall be considered confidential settlement communications.

**Guidance:** *However, formal records of the Hearings with respect to Notices of Disagreements may be transcribed by a court reporter if requested by one party. The party requesting the court reporter shall be responsible for any costs. Audio and/or video recording of the meeting should be prohibited without prior written agreement by the Board and the parties.*

**4.4 Ex parte Communications are Prohibited.** Board members shall not discuss or communicate with any party without the other party being present or copied on the communication. Each party is expressly prohibited from seeking any Board member's advice or consultation, unless done in the open at a Board meeting and in the presence of all parties.

## Rule 5: Disputed Matters

**5.1 Procedure for Scheduling Review of Matters Before the Board:** Any party can request the Board to issue a written recommendation concerning a disputed matter, by submitting to the Board a Notice of Disagreement for Recommendation. In response to a party request, the Board may consider and make non-written and written recommendations concerning any matter or circumstance that may affect or impact the objective of the commercial transaction that is the purpose of the Agreement. The parties should attempt to resolve potential disputes without resorting to use of the Board, and, except in urgent circumstances, the disputed matter should be discussed informally at a regular meeting before a party requests that the Board provide a written recommendation regarding the dispute. Written Recommendations of the Board will be binding to the extent provided in the Agreement, as agreed in writing by the parties, or as provided in these Board Rules.

**5.2 Request for Hearing.** Upon receipt of a Notice of Disagreement for Recommendation, the Chair will schedule the matter for a hearing by the Board for a written recommendation, in person or virtually, within 30 days unless the parties agree on a different schedule.

***Guidance:** The parties in the Agreement, or the Board at the outset should have agreed upon the Board's authorities and power, notice, supporting submissions, and other procedures for organization and conduct of the Hearing for Recommendation.*

**5.3** All material furnished to the Board members shall also be furnished to the other party [parties] concurrently.

**5.4** Disputing parties may offer information relating to the dispute to the Board. The Board members may ask questions, request clarification, or request for additional information. It is not contemplated that an individual presenting information be required to be sworn, or that they be subject to direct questions from the opposing party.

**5.5** Attorneys are generally discouraged from attending the Board meetings but are allowed to participate in the hearings on the following limited basis: Any participation in a hearing by legal counsel or technical experts will be for the sole purpose of facilitating a party's presentation. Legal counsel may not examine directly or by cross-examination any presenter, may not object to questions asked or factual statements made during the presentations, nor may it make or argue legal motions.

**5.6 Time for Written Recommendation.** All of the Board's written recommendations for resolution of disputes will be given to both parties, within 15 days of receiving all offered information, subject to additional time agreed upon by all parties for the Board to formulate its recommendations. The Board may elect to address contractual entitlement in an initial, written recommendation to allow the parties an opportunity to resolve issues of monetary damages.

***Guidance:** The parties in the Agreement, or the Board at the outset should have agreed upon the Board's authorities, power and procedures regarding correction and interpretation of a Recommendation.*

**5.7** No provisions associated with the Board or these DP&M Board Rules shall in any way abrogate a party's responsibility for preserving a claim under the parties' agreement or applicable law.

**5.8** Unless the Agreement stipulates otherwise, the parties are obligated to comply with the Board's written recommendations until the expiration of the Agreement. **Failure to comply with a written recommendation of the Board during the term of the Endeavor is a breach of contract.**

**5.9 Objection to Recommendation.** In the event that a party is not in agreement with a written recommendation of the Board, the party may file its written objection with the Board within 15 days of receipt of the written recommendation to preserve its rights to challenge the written recommendation after the termination of the Agreement, and shall nonetheless comply with the recommendations of the Board during the duration of the Agreement, with appropriate reservations of rights to pursue its claim, if properly preserved, at the termination or expiration of the Agreement. Absent a timely objection, the binding recommendation of the Board will become final as between the parties.

**5.10** By agreement of the parties and the Board, the steps listed under this section may be modified in order to expedite resolution.

**5.11 Recommendations of the Board.** All written recommendations of the Board shall be signed by all Board members and supported by at least a majority of the Board members. Written recommendations of the Board will be admissible in any subsequent arbitration or litigation proceedings as provided in the Agreement or as subsequently agreed by the parties in writing.

***Guidance:** Written recommendations will be based on the pertinent provisions of the Agreement and the facts and circumstances involved in the dispute.*

**5.12 Limitation on Scope of Authority of the Board.** The Board shall not have the power to compel any party to comply with its recommendations or to remedy a breach of contract.

**5.13 Condition Precedent.** Submission of a disputed matter to the Board for a written recommendation as to resolution, and timely filing of an objection to a recommendation, shall be conditions precedent to pursuit of any claim in arbitration or litigation under the Agreement.

## **Rule 6: Termination and Substitution**

**6.1 Termination of Board.** Upon mutual written agreement of all parties, this dispute management process may be terminated. The Board may also be terminated pursuant to Rule 2.3.

**6.2 Replacement of a Board Member.** Board members may withdraw from the Board by providing 30 days (or a longer notice period set forth in the Agreement or otherwise agreed upon by all parties and the Board) written notice to all other parties. Should the need arise to appoint a replacement Board member, the replacement Board member shall be selected in the same fashion as was the departing Board member. The selection of a replacement Board member shall begin promptly upon notification of the necessity for a replacement.

**6.3 Termination of a Board Member.** A party desiring to terminate a Board member for cause will notify the other party and CPR and shall provide an explanation for the requested termination. If the other party does not agree that cause exists, CPR shall decide whether cause exists, and such decision shall be effectuated. CPR may refer the matter to a CPR Challenge Review Committee.

**6.4 Immunity of Board Members.** Each Board member, in the performance of his or her duties on the Board shall act in the capacity of an independent contractor and not as an employee of any party or CPR. CPR and each Board member shall have the same immunity to the fullest extent provided by applicable law for mediators, arbitrators, adjudicators, or other dispute resolution professionals.



## **Model Clauses for CPR Rules for Administered Dispute Prevention and Management Boards for Commercial Transactions.**

CPR's Rules for Administered Dispute Prevention and Management Boards for Commercial Transactions may be adopted by the parties by using the following provisions:

### **A: Pre-Dispute Clause for Administered Dispute Prevention and Management Boards for Commercial Transactions**

#### **CPR Rules for Administered Dispute Prevention and Management Boards for Commercial Transactions Adopted.**

The parties hereby adopt the CPR Rules for Administered Dispute Prevention and Management Boards ("DP&M Board Rules"). The purpose of this Dispute Prevention and Management Board for Commercial Transactions ("Board") process is primarily to assist in the prevention and mitigation of disruption as a result of events arising between the parties to this Agreement or stemming from external events that affect the relationship between the parties or that affect the timely completion of the Endeavor. Endeavor shall be understood to encompass the entire scope of the venture, enterprise, project, or transaction under the Agreement; the intent is to encompass as broadly as possible the realization of the objective of the commercial transaction or the relationship of the parties under the Agreement. As used in this Section, the term "Agreement" is understood to mean the agreement between the parties establishing the rights and responsibilities of each party to jointly participate in this commercial Endeavor. The intent of the establishment of the Board is to facilitate contemporaneous agreement as to the resolution of unanticipated issues occurring during the progress of the work over the course of this Agreement by providing recommendations to the parties, and if resolution cannot be quickly reached, then to fairly and impartially consider disputes placed before it and to provide written recommendations for resolution of these disputes to both parties.

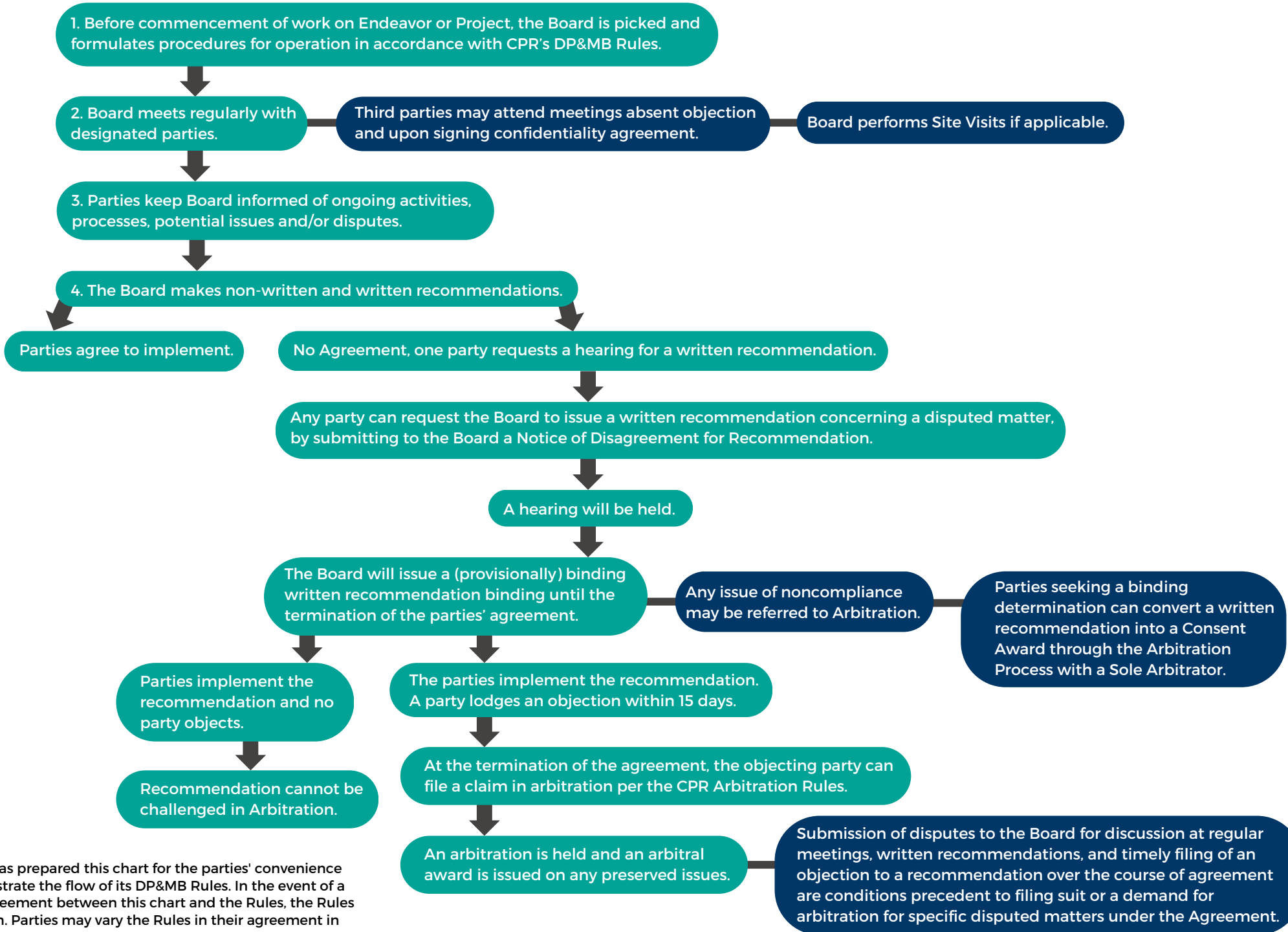
Unless the parties agree otherwise in writing, all written recommendations of the Board are provisionally binding on the parties during the term of the Agreement; provided, however, that if one party gives timely (within 15 days of receiving the written recommendation) written notice of its objection to the recommendation it shall become non-binding on the parties at the termination of the Agreement, and shall be subject to binding arbitration at the termination of the Agreement under the appropriate CPR Administered Arbitration Rules then in effect. To the extent no timely written notice of objection is made to the recommendations of the Board, the recommendation shall be deemed mutually accepted by the parties and become final and binding during the term of the Endeavor and may not be challenged in arbitration thereafter. Any issue of noncompliance with mutually accepted written recommendations by the parties may be referred to arbitration as provided below. If the parties so desire, a recommendation may be embodied in a Consent Award through the Arbitration process, provided that a sole arbitrator will be selected. Submission of a disputed matter to the Board by a party for discussion at a regular meeting of the Board over the course of the Agreement, is a condition precedent to that party filing suit or to filing a demand for arbitration at any point in time with regard to that specific disputed matter.

**CPR Arbitration Rules Adopted.** The CPR Rules for [Administered Arbitration][Administered Arbitration of International Disputes], are hereby adopted and incorporated by reference into the Agreement.

Any dispute arising out of or relating to the Agreement, including the breach, termination or validity thereof, not finally resolved by the DP&M Board Rules, shall be finally resolved by arbitration in accordance with the [CPR Rules for Administered Arbitration][as supplemented and modified by the CPR Fast Track Rules for Administered Arbitration] [CPR Rules for Administered Arbitration of International Disputes] [as supplemented and modified by the CPR Fast Track Rules for Administered Arbitration of International Disputes] (the "Arbitration Rules") by [a sole arbitrator] [three arbitrators] ("Tribunal"). The arbitral Tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral Tribunal. [Subject to any extension granted under the Fast Track Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within \_\_\_\_ days after the constitution of the Tribunal] [as provided in the Arbitration Rules]]. Judgment upon the award rendered by the Tribunal may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country)."

**B. Optional Clause (to be used with above clause) Limiting Application of Fast Track Arbitration Rules To Claims Below a Financial Threshold**

“Provided, however, that where the stated amount of the claim or counterclaim does not exceed [specify amount] exclusive of interest or costs under Rule 19 of the Administered Rules, the [CPR Fast Track Rules][CPR Fast Track Rules for Administered Arbitration of International Disputes] shall apply to supplement and modify the CPR Arbitration Rules. Furthermore, subject to any extension granted under Rule 4.5 of the Fast Track Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within \_\_\_ days after the constitution of the Tribunal] [as provided in the Fast Track Rules].”



CPR has prepared this chart for the parties' convenience to illustrate the flow of its DP&MB Rules. In the event of a disagreement between this chart and the Rules, the Rules govern. Parties may vary the Rules in their agreement in which case the parties' agreement will control.