

Justice Marie L. Garibaldi Inn of Court
December 10, 2020

Sample Arbitration Clauses For Agreements to Arbitrate Program

AAA Standard Arbitration Clauses

Commercial (U.S. domestic) - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Construction - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

International - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

Healthcare payor provider - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association pursuant to its Healthcare Payor Provider Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Employment (employment plan) - Any controversy or claim arising out of or relating to this [employment application; employment ADR program; employment contract] shall be settled by arbitration administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Employment (individually negotiated employment contracts) - Any controversy or claim arising out of or relating to this [employment application; employment ADR program; employment contract] shall be settled by arbitration administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Labor - Any dispute, claim, or grievance arising from or relating to the interpretation or application of this agreement shall be submitted to arbitration administered by the American Arbitration Association under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding on them.

CPR Arbitration Clauses

Administered Arbitration

Agreement to Arbitrate: Administered Arbitration

A. Pre-Dispute Clause for Administered Arbitration

“Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration (the “Administered Rules” or “Rules”) by (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).”

B. Existing Dispute Submission Agreement for Administered Arbitration

“We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration (the “Administered Rules” or “Rules”) the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). [We further agree that we shall faithfully observe this agreement and the Administered Rules and that we shall abide by and perform any award rendered by the arbitrator(s).] The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state).”

C. Multi-Step Administered Clause

Negotiation Between Executives (A) The parties shall attempt to resolve any dispute arising out of or relating to this [Agreement][Contract] promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of

management than the persons with direct responsibility for administration of this contract. To initiate a negotiation, a party shall give the other party written notice of any dispute not resolved in the normal course of business. Within [30] days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

Mediation (B) If the dispute has not been resolved by negotiation as provided herein within [45] days after delivery of the initial notice of negotiation, [or if the parties failed to meet within [20] days,] the parties shall endeavor to settle the dispute by mediation under the International Institute for Conflict Prevention & Resolution (“CPR”) Mediation Procedure [currently in effect OR in effect on the date of this Agreement], [provided, however, that if one party fails to participate in the negotiation as provided herein, the other party can initiate mediation prior to the expiration of the [45] days.] Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals.

Concurrent Mediation-Arbitration (C)(1) “Following the commencement of any arbitration, the parties shall endeavor to settle the dispute by confidential mediation under the CPR Mediation Procedure in effect on the date of this Agreement (the “CPR Mediation Procedure”). Unless they otherwise agree, the parties shall select a mediator from the CPR Panels of Distinguished Neutrals. If a mediation has already been initiated prior to the commencement of the arbitration pursuant to a CPR Mediation Model Clause, and if all parties consent, the previously appointed mediator may serve as the mediator under this Concurrent Mediation-Arbitration Clause. The mediation initiated under this Clause will continue until a written settlement agreement is reached, an award is delivered to the parties, or the procedure is terminated by agreement of the parties. Notwithstanding the foregoing, any party may withdraw at any time after attending the first substantive mediation conference, as provided in paragraph 3(b) of the CPR Mediation Procedure. The mediation shall be conducted in accordance with the CPR Protocol for Concurrent Mediation-Arbitration (CMA) [currently in effect OR in effect on the date of this Agreement] (the “CMA Protocol”) and the CPR Mediation Procedure, to the extent that Procedure is not inconsistent with this Clause or the CMA Protocol. Any settlement reached in the course of the mediation and before an award is made, shall be referred to the Arbitral Tribunal and, if the parties so agree, may be reflected in a consent award under Rule 21.5 of the CPR Rules for Administered Arbitration.”

OR

Optional Clause for Use with CPR Negotiation-Mediation Clause (C)(2) “In the event the parties have also adopted the CPR Negotiation-Mediation Clause, and if the dispute has not been resolved by negotiation within the period specified therein, the parties shall confer to determine whether they consent to conducting a mediation prior to the commencement of the arbitration. Absent the consent of all parties within 7 days after the end of the period specified for negotiation, the mediation shall occur after, and not before, the commencement of the arbitration.”

Arbitration (D) Any dispute arising out of or relating to this [Agreement] [Contract], including the breach, termination or validity thereof, which has not been resolved by mediation as provided herein [within [45] days after initiation of the mediation procedure] [within [30] days after appointment of a mediator], shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Administered Arbitration [currently in effect OR in effect on the date of this Agreement], by [a sole arbitrator] [three independent and impartial arbitrators, of whom each party shall designate one] [three arbitrators of whom each party shall appoint one in accordance with the 'screened' appointment procedure provided in Rule 5.4] [three independent and impartial arbitrators, none of whom shall be appointed by either party]; [provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth above.] The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state).

D. Arbitration Clause with Appellate Option

Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration (the "Administered Rules" or "Rules") by (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).

An appeal may be taken under the CPR Arbitration Appeal Procedure from any final award of an arbitral panel in any arbitration arising out of or related to this agreement that is conducted in accordance with the requirements of such Appeal Procedure. Unless otherwise agreed by the parties and the appeal tribunal, the appeal shall be conducted at the place of the original arbitration.

Non Administered

A. Pre-Dispute Clause

“Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration by (a sole arbitrator) (three arbitrators, of whom each party shall appoint one) (three arbitrators, of whom each party shall designate one in accordance with the “screened” appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be appointed by either party). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).”

B. Existing Dispute Submission Agreement

“We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration (the “Rules”) the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to (a sole arbitrator) (three arbitrators, of whom each party shall appoint one) (three arbitrators, of whom each party shall designate one in accordance with the “screened” appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be appointed by either party). We further agree that we shall faithfully observe this agreement and the Rules and that we shall abide by and perform any award rendered by the arbitrator(s). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state).”

C. Multi-Step Non-Administered Clause

Negotiation Between Executives (A) The parties shall attempt to resolve any dispute arising out of or relating to this [Agreement][Contract] promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this contract. To initiate a negotiation, a party shall give the other party written notice of any dispute not resolved in the normal course of business. Within [30] days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

Mediation (B) If the dispute has not been resolved by negotiation as provided herein within [45] days after delivery of the initial notice of negotiation, [or if the parties failed to meet within [20] days,] the parties shall endeavor to settle the dispute by mediation under the International Institute for Conflict Prevention & Resolution (“CPR”) Mediation Procedure [currently in effect OR in effect on the date of this Agreement], [provided, however, that if one party fails to participate in the negotiation as provided herein, the other party can initiate mediation prior to the expiration of the [45] days.] Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals.

Arbitration (C) Any dispute arising out of or relating to this [Agreement] [Contract], including the breach, termination or validity thereof, which has not been resolved by mediation as provided herein [within [45] days after initiation of the mediation procedure] [within [30] days after appointment of a mediator], shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Non-Administered Arbitration [currently in effect OR in effect on the date of this Agreement], by [a sole arbitrator] [three independent and impartial arbitrators, of whom each party shall designate one] [three arbitrators of whom each party shall appoint one in accordance with the ‘screened’ appointment procedure provided in Rule 5.4] [three independent and impartial arbitrators, none of whom shall be appointed by either party]; [provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth above.] The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state).

Diversity Focus

Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration (the “Administered Rules” or “Rules”) by (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). The parties agree that however the arbitrators are designated or selected, at least one member of any tribunal of three arbitrators shall be a member of a diverse group, such as women, persons of color, members of the LGBTQ community, disabled persons, or as otherwise agreed to by the parties to this Agreement at any time prior to appointment of the tribunal. Where CPR is to nominate or select the arbitrators, CPR will convene the parties to discuss the selection. In the event the parties desire multiple qualifications, if CPR is unable to accommodate a qualification specified by the parties and diversity, CPR may use its discretion to nominate or appoint a diverse candidate or candidates to serve on the tribunal. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).

Other Arbitration Clauses

Final Offer or Baseball Arbitration

This variation of arbitration entails each party providing a proposed monetary amount for the claim to the arbitrator(s) prior to the close of the hearings. At the conclusion of the hearing, the arbitrator(s) will adopt one of the proposed amounts in the award. This form of arbitration is used in baseball salary negotiations.

A related variation, often referred to as “Night Baseball” arbitration, occurs when the arbitrator(s) is not informed of the written proposals. Instead, the arbitrator(s) renders the award, which is then adjusted to conform to the closest of the parties’ proposals. Both variations eliminate an arbitrator’s ability to render compromise awards.

High-Low or Bounded Arbitration

Under this variation, the parties set a range for the award. An award over the high amount is reduced to that amount; an award under the low amount is increased to that amount; and any award within the range is not adjusted. High-low arbitration has been used in third-party insurance claims where liability is admitted, but damages are in issue.

Optional Clause to Protect Rights

Provisional Remedies and Interim Relief

The procedures specified in this Article 00 shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party may file a complaint [for statute of limitations or venue reasons,] [to seek a preliminary injunction or other provisional judicial relief,] if in its sole judgment such action is necessary. Despite such action, the parties will continue to participate in the procedures specified in this Article 00.

Tolling Statute of Limitations

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedure(s) specified in this Article 00 is pending. The parties will take such action, if any, required to effectuate such tolling.

Performance to Continue

Each party is required to continue to perform its obligations under this contract pending final resolution of any dispute arising out of or relating to this contract, [unless to do so would be impossible or impracticable under the circumstances].

Right of Termination

The requirements of this Article 00 shall not be deemed a waiver of any right of termination under this contract.

JAMS Arbitration Clauses

JAMS Standard Arbitration Clause for Domestic Commercial Contracts

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in [insert the desired place of arbitration] before [one/three] arbitrator(s). The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures [and in accordance with the Expedited Procedures in those Rules] [or pursuant to JAMS' Streamlined Arbitration Rules and Procedures]. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Clause Providing for Negotiation in Advance of Arbitration

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is

inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 1 above.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs 1 and 2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

Clause Providing for Mediation in Advance of Arbitration

If the matter is not resolved by negotiation pursuant to paragraphs ___ above, then the matter will proceed to mediation as set forth below.

Or in the Alternative

If the parties do not wish to negotiate in advance of arbitration, but do wish to mediate before proceeding to arbitration, they may accomplish this through use of the following language:

The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the clause set forth in Paragraph 5 below.

Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.

The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire.

At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 3 above.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling.

DIVERSITY AND INCLUSION

The parties agree that, wherever practicable, they will seek to appoint a fair representation of diverse arbitrators (considering gender, ethnicity and sexual orientation), and will request administering institutions to include a fair representation of diverse candidates on their rosters and list of potential arbitrator appointees.

NAM Arbitration Clauses

Sample Arbitration Clause

The parties agree that any claim, dispute or controversy arising out of, or relating to, this agreement, or the breach thereof, shall be resolved through final and binding Arbitration to be administered by (“NAM”) National Arbitration and Mediation and governed by NAM’s Comprehensive Dispute Resolution Rules and Procedures in effect at the time such claim is filed. Any award of the Arbitrator is final and binding and may be entered as a judgment in any court having jurisdiction.

Sample Construction Clause

The parties agree that any claim or dispute relating to this agreement, as well as any other matters, disputes, or claims between them, shall first be Mediated and/or Arbitrated in an attempt to resolve any and all issues. Initially, the parties agree to consider mediating the dispute. The parties agree that any claim or dispute between the parties that arises out of this contract or the relationship or obligations contemplated under this contract, including the validity of this Mediation and Arbitration clause, if not resolved through Mediation, shall be resolved through final and binding Arbitration to be administered by National Arbitration and Mediation (“NAM”). The parties agree that all Mediations and Arbitrations shall be governed by NAM’s Comprehensive Rules and Procedures and the fee schedule in effect at the time such claim is filed. Any award of the Arbitrator is final and binding and may be entered as a judgment in any court having jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective, and the remainder of the agreement shall remain effective. NAM can be contacted at 800-358-2550 Att: Construction Claims Dept., to file a claim for Mediation or Arbitration, respond to any questions regarding the dispute resolution process, or to request a copy of NAM’s current Comprehensive Rules and Procedures and fee schedule. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §1-16.

Sample Employment Arbitration Clause

Should any dispute between Employee and Employer arise at any time out of any aspect of the employment relationship, including, but not limited to, the hiring, performance or termination of employment and/or cessation of employment with the Employer and/or against any employee, officer, alleged agent, director, affiliate, subsidiary or sister company relationship, or relating to an application or candidacy for employment, Employee and Employer will confer in, good faith, to resolve promptly such dispute. In the event that Employer and Employee are unable to resolve their dispute and should either desire to

pursue a claim against the other party, both Employer and Employee agree to have the dispute resolved by final and binding Arbitration. The Employee and Employer agree that the Arbitration shall be held in the county and state where Employee currently works for Employer or most recently worked for Employer.

The arbitration shall be conducted by an arbitrator(s) provided by an impartial third-party Arbitration provider, National Arbitration and Mediation ("NAM"), and be subject to NAM's Employment Rules and Procedures and the Fee Schedule in effect at the time the claim is filed with NAM. To obtain a copy of NAM's Employment Rules and Procedures and the Fee Schedule in effect, or for general inquiries regarding the dispute resolution process, NAM can be contacted at 1-800-358-2550, Att: Employment Division.

All previously unasserted claims arising under federal, state or local statutory or common law and all disputes relating to the validity of this contract, as well this arbitration provision, shall be decided by final and binding arbitration. Any award of the arbitrator(s) is final and binding and may be entered as a judgment in any court of competent jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective, and the remainder of the agreement shall remain in effect.