



CPR

International Institute for
Conflict Prevention & Resolution

LESS CONFLICT. MORE PURPOSE.

Model Clauses

Domestic Disputes

June 2021

This publication is intended as a guide to using dispute management clauses in general and cannot cover every type of transaction or specific situation. Readers should take legal advice before applying the information covered in this publication to specific issues or transactions. CPR accepts no liability for any issue arising out of a dispute over the usage of these clauses.

ABOUT CPR

Established in 1977, CPR is an independent nonprofit organization that promotes the prevention and resolution of conflict to better enable purpose.

The **CPR Institute** drives a global prevention and dispute resolution culture through the **thought leadership** of its diverse member companies, leading mediators and arbitrators, law firms, individual practitioners, and academics. It **convenes** Committees to **share** best practices and develop innovative tools. It **connects** thought leaders through global, regional and smaller events. It **publishes** a monthly journal on related topics and **advocates** for expanding the capacity for dispute prevention and resolution globally through a variety of initiatives.

CPR Dispute Resolution provides leading edge **dispute management services** – mediation, arbitration, early neutral evaluation, dispute review boards and others -- as well as **training and education**. It is uniquely positioned to resolve disputes by leveraging the resources generated by the leaders who participate in the CPR Institute. It has deep experience in dispute management, a deep bench on its global **Panel of Distinguished Neutrals**, and deep expertise across a variety of subject areas.

ABOUT THIS GUIDE:

This publication is intended as a guide to using dispute management clauses in general and cannot cover every type of transaction or specific situation. Readers should take legal advice before applying the information covered in this publication to specific issues or transactions. CPR accepts no liability for any issue arising out of a dispute over the usage of these clauses.

In commercial contracts it is now common practice to include dispute management clauses. An efficient and effective dispute management clause will facilitate dispute prevention and resolution, save users time and cost, provide better confidentiality protection, and help preserve the relationship amongst parties. Furthermore, it allows parties to establish ground rules of any future dispute, to submit current disputes for more efficient resolution, and allows neutrals with subject matter expertise to assist in resolving these disputes.

This guide is designed to assist users in choosing the most suitable dispute management clause for their situation and covers the whole spectrum of ADR, including arbitration, mediation, multistep clauses, as well as other lesser-known processes. It is broken up into 3 different documents to ensure each document is as concise as possible: (1) domestic disputes, (2) international disputes, and (3) specialty areas, including construction, patent, franchise, and employment disputes as well as dispute prevention provisions and clauses for other proceedings like minitrials, early neutral evaluation and DRBs.

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I. ADMINISTERED ARBITRATION

1. 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 (“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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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 the arbitration shall be (city, state).

2. 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 (“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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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).

3. Pre-Dispute 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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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 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.

II. NON-ADMINISTERED ARBITRATION

1. 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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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 the arbitration shall be (city, state).

2. 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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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).

3. Pre-Dispute 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 [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

arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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 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.

III. MEDIATION

1. Pre-Dispute Clause

The parties shall attempt to resolve any dispute arising out of or relating to this Agreement promptly by confidential mediation under the [then current] [CPR Mediation Procedure](#) [in effect on the date of this Agreement] [as modified by the [CPR Streamlined Mediator Selection Procedure](#)], before resorting to arbitration or litigation.

2. Existing Dispute Submission Agreement

We hereby agree to submit to confidential mediation under the [CPR Mediation Procedure](#) [as modified by the [CPR Streamlined Mediator Selection Procedure](#)] the following controversy:

[Describe briefly]

3. Negotiation-Mediation 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 [CPR Mediation Procedure](#) [currently in effect OR in effect on the date of this Agreement][as modified by the [CPR Streamlined Mediator Selection Procedure](#)], [provided, however, that if one party fails to participate as provided herein, the other party can initiate mediation prior to the expiration of the] 45 [days.] [The parties have selected [insert name] as the mediator in any such dispute, and [he][she] has agreed to serve in that capacity and to be available on reasonable notice. In the event that [insert named mediator] becomes unwilling or unable to serve, the parties have selected [insert name] as the alternate mediator. In the event that neither person is willing or able to serve, the parties will agree on a substitute with the assistance of CPR.] [Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals.]

IV. MULTI-STEP CLAUSES

1. With Administered Arbitration

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 [CPR Mediation Procedure](#) [currently in effect OR in effect on the date of this Agreement][as modified by the [CPR Streamlined Mediator Selection Procedure](#)], [provided, however, that if one party fails to participate as provided herein, the other party can initiate mediation prior to the expiration of the] 45 [days.] [The parties have selected [insert name] as the mediator in any such dispute, and [he][she] has agreed to serve in that capacity and to be available on reasonable notice. In the event that [insert named mediator] becomes unwilling or unable to serve, the parties have selected [insert name] as the alternate mediator. In the event that neither person is willing or able to serve, the parties will agree on a substitute with the assistance of CPR.] [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 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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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).

2. With Non-Administered Arbitration

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 [CPR Mediation Procedure](#) [currently in effect OR in effect on the date of this Agreement][as modified by the [CPR Streamlined Mediator Selection Procedure](#)], [provided, however, that if one party fails to participate as provided herein, the other party can initiate mediation prior to the expiration of the] 45 [days.] [The parties have selected [insert name] as the mediator in any such dispute, and [he][she] has agreed to serve in that capacity and to be available on reasonable notice. In the event that [insert named mediator] becomes unwilling or unable to serve, the parties have selected [insert name] as the alternate mediator. In the event that neither person is willing or able to serve, the parties will agree on a substitute with the assistance of CPR.] [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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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).

3. Concurrent Mediation-Arbitration

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”) [as modified by the [CPR Streamlined Mediator Selection Procedure](#)]. [Unless otherwise agreed, 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](#).

4. Optional Clause for Use with CPR Multi-Step Clauses

In the event the parties have also adopted the CPR Negotiation/Mediation/Arbitration 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.

V. EXPEDITED PROCEEDINGS (FAST TRACK ARBITRATION)

1. Fast Track Arbitration (Administered)

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 [Fast Track Administered Arbitration Rules](#). [The arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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 the arbitration shall be (city, state).

2. Fast Track Arbitration (Non-Administered)

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 [Fast Track Non-Administered Arbitration Rules](#). [The arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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 the arbitration shall be (city, state).

3. Existing Dispute Submission Agreement for Fast-Track 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”), as supplemented and modified by the CPR Fast Track Rules for 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]. [The arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s).] Subject to any extension granted under Rule 4.5 of the 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 Rules].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 may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).”

VI. DIVERSITY COMMITMENT 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 ("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 arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). OR The court, and not the arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of 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 the arbitration shall be (city, state).