



CPR

International Institute for
Conflict Prevention & Resolution

LESS CONFLICT. MORE PURPOSE.

Model Clauses

International Disputes

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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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Note on “Kompetenz-Kompetenz”:

Unlike in US domestic disputes, the concept of “Kompetenz-Kompetenz” is assumed in international arbitration. Therefore, CPR intentionally left out language referencing who has primary responsibility to hear and determine challenges to the jurisdiction of the tribunal. Drafters are free to include language to specify according to their needs.

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 of International Disputes](#) 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 to be appointed in accordance with the screened appointment procedure provided in Rule 5.4] [three arbitrators, none of whom shall be designated by either party]. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The language of the arbitration shall be (language).

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 of International Disputes](#) (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 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 to be appointed 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 Rules and that we shall abide by and perform any award rendered by the arbitrator(s). Judgment upon the award may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The language of the arbitration shall be (language).

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 of International Disputes](#), by (a sole arbitrator) (three arbitrators, of whom each party shall appoint one) (three arbitrators, none of whom shall be appointed by either party). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The arbitration shall be conducted in (language). The Neutral Organization designated to perform the functions specified in Rules 5, 6 and 7 shall be (name of CPR or other organization).

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 of International Disputes](#) (the “International 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, none of whom shall be appointed by either party). We further agree that we shall faithfully observe this agreement and the International Rules and that we shall abide by and perform any award rendered by the arbitrator(s). Judgment upon the award may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The arbitration shall be conducted in (language). The Neutral Organization designated to perform the functions specified in Rules 5, 6 and 7 shall be (name of CPR or other organization).

III. MEDIATION

1. Pre-Dispute Clause

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by mediation under the [then current] CPR [International 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 International Institute for Conflict Prevention & Resolution (“CPR”) [International Mediation Procedure](#) [as modified by the [CPR Streamlined Mediator Selection Procedure](#)], the following controversy:

[Describe briefly]

IV. MULTI-STEP CLAUSE

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 International Institute for Conflict Prevention & Resolution (“CPR”) [International 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 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 and Resolution (“CPR”) [Rules for Administered Arbitration of International Disputes](#) [currently in effect OR in effect on the date of this Agreement], 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 to be appointed in accordance with the screened appointment procedure provided in Rule 5.4] [three arbitrators, none of whom shall be designated 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.] Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be [city, country]. The language of the arbitration shall be [language].

2. With Non-Administered Arbitration

Any dispute arising out of or relating to this Agreement, including the breach, termination, validity, interpretation and performance thereof (“Dispute”) shall be resolved in accordance with the procedures specified in this Article [XX], which shall be the sole and exclusive procedures for the resolution of any such dispute.

(A) NEGOTIATION

The parties shall attempt to resolve any dispute arising out of or relating to this Agreement [Or: 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.

(B) MEDIATION

If the Dispute has not been resolved by negotiation in accordance with paragraph (A) within 50 days after delivery of the Notice, [or if the parties failed to confer within 40 days after delivery of the Notice], [or if the party receiving the Notice failed to submit to the other a written response within 20 days after delivery of the Notice], [or at any time if one party expressly refuses to participate in the negotiation in accordance with paragraph (A), then the parties shall endeavor to settle the Dispute by mediation under the [CPR International Mediation Procedure](#) then currently in effect [Or: in effect on the date of this Agreement] [as modified by the [CPR Streamlined Mediator Selection Procedure](#)]. [Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals {and, if they require it, shall notify CPR to initiate a selection process}].

If the Dispute has not been resolved by mediation within 35 days after appointment of the mediator, or at any time if one party expressly refuses to participate in the negotiation or mediation in accordance with paragraphs (A) and (B), then either party may submit the Dispute to arbitration as the exclusive means of resolving it in accordance with paragraph (C). All communications during the negotiation and mediation pursuant to paragraphs (A) and (B) are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality and professional secrecy protections provided by applicable law.

(C) ARBITRATION

Any Dispute not resolved through negotiation or mediation in accordance with paragraphs (A) and (B) shall be finally resolved by arbitration in accordance with the CPR [Rules for Non-Administered Arbitration of International Disputes](#) then in effect [Or: in effect on the date of this Agreement by three arbitrators, one appointed by each of the parties, and the third arbitrator who shall act as chair of the Tribunal [Or: a sole arbitrator] [Or: three arbitrators not appointed by the parties. The arbitration shall be held in [city, country]. The arbitration proceedings shall be conducted in the [specify] language. Notwithstanding any other provision in this Agreement, the law governing this arbitration agreement and the arbitration proceedings shall be the arbitration law of the place of arbitration. Judgment upon the award may be entered by any court having jurisdiction thereof.

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Comment:

As is the case with any dispute resolution clause, this multi-step clause could include additional paragraphs, covering questions such as provisional remedies, interim relief, tolling of statute of limitations, issues of continued performance, and right of termination.

V. EXPEDITED PROCEEDINGS: FAST TRACK 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 of International Disputes (the “Administered Rules”), as supplemented and modified by the [CPR Fast Track Rules for Administered Arbitration of International Disputes](#) (the “Rules”), by [a sole arbitrator] [three arbitrators]. 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).

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 of International Disputes (the “Administered Rules”), as supplemented and modified by the [CPR Fast Track Rules for Administered Arbitration of International Disputes](#) (the “Rules”), the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to a [sole arbitrator] [three arbitrators]. 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).

3. Optional Clause Limiting Application of Fast Track Arbitration Rules to Claims Below a Financial Threshold

Note: [To be used with CPR Clauses 1. (Pre-Dispute Clause) or 2. (Existing Dispute Submission Agreement) of the CPR Rules for Administered Arbitration of International Disputes]

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 for Administered](#)

Arbitration of International Disputes (the “Fast Track Rules”) shall apply to supplement and modify the CPR Rules for Administered Arbitration of International Disputes (the “Administered 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].

VI. DIVERSITY COMMITMENT CLAUSE

Currently only 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 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).