



CPR

International Institute for
Conflict Prevention & Resolution

LESS CONFLICT. MORE PURPOSE.

Model Clauses

Specialty Areas

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.

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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. GENERALLY APPLICABLE PROCEDURES

1. Appellate Procedure

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.

2. Concurrent Arbitration-Mediation

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 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.

OPTIONAL CLAUSE:

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.

3. CPR Model Clauses for Allocating Responsibility for Determining Arbitrability

“[The parties further agree that] the arbitral tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal.”

OR

“[The parties further agree that] the court, and not the arbitral tribunal, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal.”

II. SPECIALTY MATTERS

1. Construction

A. PRE-DISPUTE CLAUSE (ARBITRATION)

Any dispute arising out of or relating to this contract, including the making, breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Expedited Arbitration of Construction Disputes (the “Rules”), in the form in effect on the date of this agreement, by three neutral arbitrators, of whom each party shall appoint one with the third to be selected by agreement or appointment by the International Institute for Conflict Prevention & Resolution (“CPR”) [unless the parties select one of the following options by affirmatively placing an “x” in the appropriate box below:

- one neutral arbitrator to be appointed by the CPR Institute; or
- three neutral arbitrators to be appointed by the CPR Institute].

[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].

B. EXISTING DISPUTE SUBMISSION AGREEMENT (ARBITRATION)

We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Expedited Arbitration of Construction Disputes (the “Rules”), in effect on the date of this agreement, the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to three neutral arbitrators, of whom each party shall appoint one with the third to be selected by agreement or appointment by the CPR Institute [unless the parties select one of the following options by affirmatively placing an “x” in the appropriate box below:

- one neutral arbitrator to be appointed by the CPR Institute; or
- three neutral arbitrators to be appointed by the CPR Institute].

[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).] 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. APPEAL PROCEDURE

Unless otherwise agreed by the parties, within 30 days of receipt by the parties of a final arbitration award in any arbitration arising out of or related to this agreement, an appeal may be taken from such final award under the [CPR Institute Arbitration Appeal Procedure](#), currently in effect. Pursuant to such Procedure, the appeal shall be heard by three former federal judges who will apply the following grounds for appeal:

- i. the award contains material and prejudicial errors of law of such nature that it does not rest on any appropriate legal basis;
- ii. the award contains factual findings clearly unsupported by the record; or
- iii. the award is subject to any of the enumerated grounds contained in Section 10 of the Federal Arbitration Act for vacating awards.

No appeal may be filed unless the arbitrators in the original arbitration were required by the parties to reach a decision in compliance with applicable law and issue a written award setting forth the factual and legal bases; and a record was made of all hearings and evidence in such original arbitration proceeding.

Unless otherwise agreed to by the parties and the appeal Tribunal, the appeal shall be conducted at the place of the original arbitration.

2. Employment

A. PRE-DISPUTE CLAUSE (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”) Administered Employment Arbitration 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 in accordance with the screened appointment procedure provided in Rule 5.3]. [The parties further agree that the arbitral tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal. OR The parties further agree that the court, and not the arbitral tribunal, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal.*] [The parties further agree that, if applicable, the procedures of the CPR Employment-Related Mass Claims Protocol shall also govern the arbitration. The Protocol may be found here. {Contract must provide access to the Protocol via a link or otherwise.}] 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) (no more than 50 miles from employee’s hometown).

B. EXISTING DISPUTE SUBMISSION AGREEMENT (ARBITRATION)

We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Administered Employment Arbitration Rules (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 in accordance with the screened appointment procedure provided in Rule 5.3]. [We further agree that the arbitral tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal. OR The parties further agree that the court, and not the arbitral tribunal, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal.*] 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 rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state) (no more than 50 miles from employee’s hometown).

C. MEDIATION SUBMISSION AGREEMENT

AGREEMENT made _____, 20__ by and between _____ of _____ (“Employee”), represented by _____; and _____ of _____ (“Company”), represented by _____.

In brief, the Employee's claim is as follows

_____.

The Employee seeks _____.

The Company's response _____.

The Employee and the Company both wish to dispose expeditiously of their differences. The parties hereby agree to private and confidential mediation of their dispute pursuant to the [CPR Employment Dispute Mediation Procedure](#) (the “Procedure”) [as modified by the [CPR Streamlined Mediator Selection Procedure](#)], a copy of which is attached to this Agreement. Both parties and their representatives (if any) have read and understand the Procedure. The parties hereby agree to all provisions of the Procedure, except as expressly modified in an exhibit appended to this Submission Agreement and initialed by the parties.

The procedure shall be conducted before _____, who shall serve as Mediator and who has agreed to so serve. The Mediator shall be compensated at the rate of \$ _____ per hour, plus out-of-pocket expenses. The parties have agreed to be responsible for the fees as follows:

_____.

Neither party knows of any circumstances that would cause reasonable doubt regarding the impartiality of the person named as Mediator.

The Employee hereby affirms that he/she is entering into this Submission Agreement voluntarily, knowingly, and after the opportunity for full consultation with a representative or counsel of his/her own choosing.

Signed by: _____ Date: _____
Employee

Signed by: _____ Date: _____
Representative of or Counsel for Employee

(if applicable)
Signed by: _____ Date: _____
For Company

Signed by: _____ Date: _____
Representative of or Counsel for Company

3. Franchise Mediation Procedure

A. PRE-DISPUTE CLAUSE (MEDIATION)

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

B. PRE-DISPUTE CLAUSE (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 Rules for Non-Administered Arbitration of Franchise Disputes by [a sole arbitrator] [three arbitrators, of whom each party shall appoint one pursuant to Rules 5.1 and 5.2] [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).

C. EXISTING DISPUTE SUBMISSION AGREEMENT (ARBITRATION)

We, the undersigned parties, here by agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration of Franchise 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 appoint one pursuant to Rules 5.1 and 5.2] [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).] 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].

4. Patent Disputes

A. MULTI STEP CLAUSE

Negotiation

If a dispute arises out of or relates to this Agreement, or its breach, the disputing party may give the other party written notice of any dispute not resolved in the normal course of business. Within [30] days after delivery of the written notice, 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 shall meet at a mutually acceptable time and place and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute.

Mediation

If the dispute has not been resolved by negotiation within [45] days after delivery of the initial notice of negotiation, [or if the parties failed to meet within]30[days after delivery], the parties agree to resolve the dispute through mediation by a sole mediator selected by the parties or, at any time at the option of a party, to mediation by the [CPR Mediation Procedure](#) [as modified by the [CPR Streamlined Mediator Selection Procedure](#)].

B. PRE-DISPUTE CLAUSE (ARBITRATION)

If not thus resolved, any controversy or claim arising out of or relating to this contract, or the enforcement, breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the [current] CPR [Rules for Non-Administered Arbitration of Patent and Trade Secret Disputes](#) [in effect on the date of this contract], by (a sole arbitrator) (three neutral arbitrators, none of whom shall be appointed by either party) (three arbitrators, of whom each party shall appoint one). [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. §51 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). Insofar as the proceeding relates to patents, it shall also be governed by 35 U.S.C. §294, to the extent applicable.

C. EXISTING DISPUTE SUBMISSION AGREEMENT (ARBITRATION)

We, the undersigned parties, hereby agree to submit to arbitration in accordance with the CPR [Rules for Non-Administered Arbitration of Patent and Trade Secret Disputes](#) (the “Rules”) in effect on the date of this agreement the following controversy:

[Describe briefly]

We further agree that the above controversy shall be submitted to [a sole arbitrator] [three neutral arbitrators, none of whom shall be appointed by either party] [three arbitrators, of whom each party shall appoint one]. [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).] 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 United States 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 the arbitration shall be [city, state]. Insofar as the proceeding relates to patents, it shall also be governed by 35 U.S.C. §294, to the extent applicable.

III. SPECIAL SERVICES AND DISPUTE PREVENTION

1. Minitrial

The parties will attempt to resolve any dispute arising out of or relating to this Agreement in accordance with the [CPR Minitrial Procedure](#) [currently in effect OR in effect on the date of this Agreement] and will enter into an initiating agreement in the form annexed to such Procedure.

2. Early Neutral Evaluation

At the request of either party, the parties submit the dispute between them to Early Neutral Evaluation. The Early Neutral Evaluator shall be appointed through the International Institute for Conflict Prevention & Resolution.

3. Dispute Resolution Boards (DRBs)

The parties agree to create a Dispute Resolution Board ("DRB") consisting of three members. The DRB shall consist of one member designated by _____, one member designated by _____ and a third member designated by the two appointed members and shall serve as the chairperson of the DRB. [If within ___ days the parties are unable to appoint any such member of the DRB, they will reach out to CPR to assist with the appointment of any such member]. Thereafter, the DRB shall administer any DRB-related proceeding.

4. Dispute Prevention Provisions

Despite the general acceptance of alternative dispute resolution provisions in contractual arrangements, to date, there has been little attention given to contractual dispute prevention protocols. In an effort to shift the paradigm, CPR has developed Model Dispute Prevention and Resolution provisions, which parties can modify to utilize in their business arrangements. The primary goals of the model provisions are to establish a framework to identify potential conflicts early and to implement dispute prevention mechanisms to avoid the conflict turning into a value-depleting dispute.

On the [CPR website](#), you can find a memo describing the Model Dispute Prevention and Resolution provisions, a term sheet that outlines the nature of the provisions and three model agreements for a "Standing Neutral," "Standby Neutral" and "No Neutral" provisions. For full commentary on these provisions, please consult the [document](#) in the "related" section.