



ADR Systems Model Clause Language Effective October 16, 2015

Introduction: Model Alternative Dispute Resolution Clauses for Commercial Contracts

Conflict is inevitable. Even under the best of circumstances, and between organizations with the most positive working relations, there is the potential for conflict. When such conflict arises, companies are faced with the overwhelming time, expenses and negative effects on their business operations that often go hand-in-hand with the traditional litigation process. At ADR Systems, we recommend planning for the inevitable through the use of dispute resolution clauses in your commercial contracts.

Thoughtfully crafted dispute resolution clauses, inserted at the time a contract is negotiated or consummated, allow parties to implement optimal strategies for conflict resolution before a problem arises. By planning ahead, parties can avoid the negative press, costly delays and expenses often associated with traditional litigation. By anticipating conflict, you have the opportunity to implement pro-active, constructive procedures that will guide you through the resolution of any disputes and potentially protect important business relationships. Doing this at the onset of a contractual relationship saves time and money. Once a dispute arises, communication often breaks down and negotiating dispute resolution procedures becomes much more difficult for everyone involved.

ADR Systems of America offers the following model clauses that may be inserted into a commercial contract before any disputes arise. These clauses may either be used as they are, or with such modifications as are suitable for your particular needs:

1. Basic Arbitration Clause – provides for Arbitration only (page 2)
2. Arbitration Step Clause 1 – provides for Negotiation Step Prior to Arbitration Step (page 2)
3. Arbitration Step Clause 2 – provides for Negotiation and Mediation Steps Prior to Arbitration (page 3)
4. Mediation / Arbitration Step Clause – provides for Mediation Step Prior to Arbitration (page 5)
5. Basic Mediation Clause – provides for Mediation only (page 6)
6. Negotiation / Mediation Step Clause – provides for Negotiation Step Prior to Mediation (page 6)

These model clauses are not intended and should not be considered as providing legal advice or opinion. At ADR Systems, we go to great lengths to ensure our information is accurate. We recommend that you consult an attorney with regard to the use and interpretation of these clauses in the context of your specific business relationship or transaction, and the applicable law.

ADR Systems of America's commercial alternative dispute resolution clauses may be downloaded in Word or PDF format. For more information on these clauses or any other ADR services, please contact your ADR Systems Case Manager or call 800.423.7010 and ask for a Commercial Services Consultant.

Model Arbitration Clauses

The objective with respect to these clauses is to provide language that is simple, easy to understand and that assures that any future dispute will be arbitrated. Parties may choose to add more details pertaining to specific procedures to be followed or complex provisions that are meaningful within the context of the contract, parties' relationship, business environment, or applicable law.

Basic Arbitration Clause:

The parties agree that any disputes, claims or controversies arising out of or in any way related to this contract, or the breach, enforcement or validity thereof, shall be resolved by binding arbitration administered by ADR Systems. The arbitration will be conducted in accordance with the ADR Systems Rules of Commercial Arbitration and the ADR Systems Commercial Fee Schedule in effect at the time of filing the demand for arbitration. Either party may commence the arbitration by filing a written demand for arbitration with ADR Systems along with the requisite filing fee. The parties covenant that they shall participate in the arbitration in good faith and that they will share equally in the costs, unless decided otherwise as part of the Arbitral Award. The arbitration will take place in [desired location], before [one or three] arbitrators selected from ADR Systems' Commercial Panel in accordance with ADR Systems' procedures for the appointment of arbitrators. The award rendered by the arbitrator(s) is final and binding, and may be entered into any court or tribunal having jurisdiction thereof. Any court of competent jurisdiction may enforce the provisions of this paragraph. The party seeking enforcement is entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. ADR Systems may be contacted at 800.423.7010; Attention: Commercial Case Manager to assist with any questions regarding the arbitration process.

Arbitration Step Clause 1: Provides for Negotiation prior to Arbitration

The parties agree that, before resorting to any formal dispute resolution process concerning any dispute, claim, or controversy arising out of or in any way relating to this contract, they will use their best endeavors to settle such dispute, claim or controversy by negotiating with each other in good faith. To this end, executives with full authority to settle the dispute shall negotiate and consult with each other in an effort to find a just and equitable resolution that serves their respective and mutual interests, including their continuing business / professional relationship. The complaining party must give the other party written notice of any dispute, claim, or controversy (the "Notice"). Unless otherwise agreed in writing, the responding party shall have 15 business days after receipt of the Notice to submit a written response to the complaining party. Written documents, exchanged between the parties, should include, but not be limited to, the following:

- Statement of position;
- Summary of arguments, facts and any documents (photos, written correspondence, etc.) that support each party's position, (summary not to exceed 20 pages);
- Names and titles of the party principals who will represent each party in negotiations; and
- Names and titles of all others participating in the negotiation.

Unless otherwise agreed in writing, the party representatives shall meet at a mutually acceptable location within 30 business days after receipt of the Notice. The parties shall have 48 hours to complete the negotiation. Party representatives agree to document any and all resolutions or partial resolutions to the dispute in writing and sign and date the document.

If the parties are unable to completely resolve the dispute through negotiation, or if the responding party fails to respond to the complaining party's Notice within 15 business days of its receipt, the parties agree to proceed to binding arbitration administered by ADR Systems. The arbitration hearing will be conducted in accordance with the ADR Systems Rules of Commercial Arbitration and the ADR Systems Commercial Fee Schedule in effect at the time of filing the demand for arbitration. Either party may commence the arbitration by filing a written demand for arbitration with ADR Systems along with the requisite filing fee. The parties' covenant that they shall participate in the arbitration in good faith and that they will share equally in the costs. The arbitration will take place in [desired location], before [one or three] arbitrators selected from ADR Systems Commercial Panel. The award rendered by the arbitrator(s) is final and binding, and may be entered into any court or tribunal having jurisdiction thereof. Any court of competent jurisdiction may enforce the provisions of this paragraph. The party seeking enforcement is entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. ADR Systems may be contacted at 800.423.7010; Attention: Commercial Case Manager to assist with any questions regarding the arbitration process.

Arbitration Step Clause 2: Provides for Negotiation and Mediation prior to Arbitration

The parties agree that, before resorting to any formal dispute resolution process concerning any dispute, claim, or controversy arising out of or in any way relating to this contract, they will use their best endeavors to settle such dispute, claim or controversy by negotiating with each other in good faith. To this end, executives with full authority to settle the dispute shall negotiate and consult with each other in an effort to find a just and equitable resolution that serves their respective and mutual interests, including their continuing business / professional relationship. The complaining party must give the other party written notice of any dispute, claim, or controversy (the "Notice"). Unless otherwise agreed in writing, the responding party shall have 15 business days after receipt of the Notice to submit a written response to the complaining party. Written documents, exchanged between the parties, should include, but not be limited to, the following:

- Statement of position;
- Summary of arguments, facts and any documents (photos, written correspondence, etc.) that support each party's position, (summary not to exceed 20 pages);
- Names and titles of the party principals who will represent each party in negotiations; and
- Names and titles of all others participating in the negotiation.

Unless otherwise agreed in writing, the party representatives shall meet at a mutually acceptable location within 30 business days after receipt of the Notice. The parties shall have 48 hours to complete the negotiation. Party representatives agree to document any and all resolutions or partial resolutions to the dispute in writing and sign and date the document.

If the parties are unable to completely resolve the dispute through negotiation, or if the responding party fails to respond to the complaining party's Notice within 15 business days, the parties agree to mediate their disputes at ADR Systems.

The mediation will be administered by ADR Systems and the ADR Systems Commercial Fee Schedule in effect at the time of filing the request for mediation. Either party may file a written request for mediation with ADR Systems no sooner than 48 hours after the close of negotiations and no more than 30 days after the close of negotiations. The parties' covenant that they shall participate in the mediation in good faith and that they will share equally in the costs. The parties will cooperate with ADR Systems and each other in the selection of the mediator and the scheduling of the mediation within 14 days from the date of submitting the dispute to mediation. The date of the mediation session must be within 60 days from the date of initiation of the mediation.

If at the conclusion of the mediation, or, if no mediation is conducted, 45 days after the date of the request for mediation, the parties have not completely resolved the dispute, the parties agree to proceed to binding arbitration administered by ADR Systems. The arbitration hearing will be conducted in accordance with the ADR Systems Rules of Commercial Arbitration and the ADR Systems Commercial Fee Schedule in effect at the time of filing the demand for arbitration. Either party may commence the arbitration by filing a written demand for arbitration with ADR Systems along with the requisite filing fee. The parties' covenant that they shall participate in the arbitration in good faith and that they will share equally in the costs. The arbitration will take place in [desired location], before [one or three] arbitrators selected from ADR Systems Commercial Panel. The award rendered by the arbitrator(s) is final and binding, and may be entered into any court or tribunal having jurisdiction thereof. Any court of competent jurisdiction may enforce the provisions of this paragraph. The party seeking enforcement is entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. ADR Systems may be contacted at 800.423.7010; Attention: Commercial Case Manager to assist with any questions regarding the arbitration process.

Mediation / Arbitration Step Clause: Provides for Mediation prior to Arbitration

The parties agree that any disputes, claims or controversies arising out of or relating to this contract, or the breach, enforcement or validity thereof, shall be submitted to mediation administered by ADR Systems. Fees for the mediation will apply according to the ADR Systems Commercial Fee Schedule in effect at the time of filing the request for mediation. Either party may commence the mediation by filing a written request for mediation with ADR Systems. The parties' covenant that they shall participate in the mediation in good faith and that they will share equally in the costs. The parties will cooperate with ADR Systems and each other in the selection of the mediator and date of the mediation session. Both must be confirmed within 14 days from the date of submitting the dispute to mediation. Unless otherwise agreed to in writing by the parties, the date of the mediation session must be scheduled no later than 60 days from the date of initiating the mediation.

The mediation will take place in [desired location], before [one or two] mediators selected from ADR Systems Commercial Neutral Panel in effect at the time of initiating the mediation. For further information, or assistance with filing a request for mediation, ADR Systems may be contacted at 800.423.7010; Attention: Commercial Case Manager or visit our website at www.adrsystems.com.

If the mediation is not scheduled within the time provided in the paragraphs above, or does not result in complete settlement of the dispute, the parties agree to proceed to binding arbitration administered by ADR Systems. Either party may commence the arbitration by filing a written demand for arbitration along with the requisite filing fee any time after the mediation session has concluded, or at any time following 45 days from the date of the request for mediation. Mediation and settlement discussions may continue after the commencement of the arbitration, and at the sole discretion of the parties.

The arbitration hearing will be conducted in accordance with the ADR Systems Rules of Commercial Arbitration and the ADR Systems Commercial Fee Schedule in effect at the time of filing the demand for arbitration. The parties covenant that they shall participate in the arbitration in good faith and that they will share equally in the costs. The arbitration will take place in [desired location], before [one or three] arbitrators selected from ADR Systems Commercial Panel. The award rendered by the arbitrator(s) is final and binding, and may be entered into any court or tribunal having jurisdiction thereof. Any court of competent jurisdiction may enforce the provisions of this paragraph. The party seeking enforcement is entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. ADR Systems may be contacted at 800.423.7010; Attention: Commercial Case Manager to assist with any questions regarding the arbitration process.

Model Mediation Clauses

The objective with respect to these clauses is to provide language that is simple, easy to understand and assures that any future dispute will be mediated. Parties may choose to add more details identifying specific procedures to be followed, or may draft more

complex provisions that are meaningful within the context of the contract, parties' relationship, business environment, or applicable law.

Basic Mediation Clause: Provides for Mediation Only

The parties agree that any disputes, claims or controversies arising out of or in connection with this contract, or the breach, enforcement or validity thereof, shall be submitted to mediation administered by ADR Systems. Fees for the mediation will apply according to the ADR Systems Commercial Fee Schedule in effect at the time of filing the request for mediation.

Either party may commence the mediation by filing a written request for mediation with ADR Systems. The parties' covenant that they shall participate in the mediation in good faith and that they will share equally in the costs. The parties will cooperate with ADR Systems and each other in the selection of the mediator and date of the mediation session. Both must be confirmed within 14 days from the date of submitting the dispute to mediation. Unless otherwise agreed to in writing by the parties, the date of the mediation session must be scheduled no later than 60 days from the date of initiating the mediation.

The mediation will take place in [desired location], before [one or two] mediators selected from ADR Systems Commercial Neutral Panel in effect at the time of initiating the mediation. For further information, or assistance with filing a request for mediation, ADR Systems may be contacted at 800.423.7010; Attention: Commercial Case Manager or visit our website at www.adrsystems.com.

Negotiation / Mediation Step Clause: Provides for Negotiation prior to Mediation

The parties agree that, before resorting to any formal dispute resolution process concerning any dispute, claim, or controversy arising out of or in any way relating to this contract, they will use their best endeavors to settle such dispute, claim or controversy by negotiating with each other in good faith. To this end, executives with full authority to settle the dispute shall negotiate and consult with each other in an effort to find a just and equitable resolution that serves their respective and mutual interests, including their continuing business / professional relationship. The complaining party must give the other party written notice of any dispute, claim, or controversy (the "Notice"). Unless otherwise agreed in writing, the responding party shall have 15 business days after receipt of the Notice, to submit a written response to the complaining party. Written documents, exchanged between the parties, should include, but not be limited to, the following:

- Statement of position;
- Summary of arguments, facts and any documents (photos, written correspondence, etc.) that support each party's position, (summary not to exceed 20 pages);
- Names and titles of the party principals who will represent each party in negotiations; and
- Names and titles of all others participating in the negotiation.

Unless otherwise agreed in writing, the party representatives shall meet at a mutually acceptable location within 30 business days after receipt of the Notice. The parties shall have 48 hours to complete the negotiation. Party representatives agree to document any and all resolutions or partial resolutions to the dispute in writing and sign and date the document.

If the parties are unable to completely resolve the dispute through negotiation, or if the responding party fails to respond to the complaining party's Notice within 15 business days, the parties agree to mediate any disputes at ADR Systems. The mediation will be administered by ADR Systems and the ADR Systems Commercial Fee Schedule in effect at the time of filing the request for mediation. Either party may file a written request for mediation with ADR Systems no sooner than 48 hours after the close of negotiations and no more than 30 days after the close of negotiations. The parties' covenant that they shall participate in the mediation in good faith and that they will share equally in the costs. The parties will cooperate with ADR Systems and each other in the selection of the mediator and the scheduling of the mediation. Both must be confirmed within 14 days from the date of submitting the dispute to mediation. Unless otherwise agreed to in writing by the parties, the date of the mediation session must be scheduled no later than 60 days from the date of initiating the mediation.

The mediation will take place in [desired location], before [one or two] mediators selected from ADR Systems Commercial Neutral Panel in effect at the time of initiating the mediation. For further information, or assistance with filing a request for mediation, ADR Systems may be contacted at 800.423.7010; Attention: Commercial Case Manager or visit our website at www.adrsystems.com.

If the parties are unable to completely resolve the dispute through mediation, they will be free to pursue other means of dispute resolution.