

## Detailed ADR Clauses for Standard Business Agreements

### **Negotiation Clause ( with option for mediation)**

Should a dispute arise out of or be in relation to this Agreement, the parties shall attempt in good faith to resolve the dispute promptly by negotiation between executives who have the 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. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within [15] days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and the response shall include (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within [30] days after delivery of the disputing party's 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 reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence.

If the dispute has not been resolved by negotiation within [45] days of the disputing party's notice, or if the parties failed to meet within [30] days, the parties shall endeavor to settle the dispute by mediation under the CPR Mediation Procedures. The parties will select a mediator from the CPR Panels of Distinguished Neutrals, or in the alternative, select a mediator in a mutually agreed upon manner.

### **Mediation Clause**

Any dispute arising out of or relating to this Agreement shall be, prior to any party initiating litigation, mediated under the CPR Mediation Procedures. The parties will select a mediator from the CPR Panels of Distinguished Neutrals, or in the alternative, select a mediator in a mutually agreed up manner. At all times during the mediation process, including the selection of the mediator, the parties will act in good faith to attempt to settle their dispute. Once the mediator has been selected and the date of the mediation set, the mediator may require the parties to submit (a) a mediation statement clarifying the disputed issues, as well as each party's position and a summary of arguments supporting that position, and (b) the name and title of the person who will attend and have authority to make the ultimate binding settlement decisions on behalf of the parties.

At all times during the mediation process, the mediator will maintain impartiality, though he may give his/her views, opinions or settlement proposals as a means to move the dispute toward resolution. However, the mediator's views, opinions, proposals, etc. shall not be deemed to be legal advice. Any and all statements or documents produced for the mediation shall be considered privileged information gained in the course of

settlement negotiations, and as such, are not admissible and discoverable in any later legal proceeding. However, if the information is otherwise admissible or discoverable independent of the mediation process, the information will not be deemed to be privileged just because of its disclosure or use in the mediation proceeding.

The parties agree that any settlement agreement that they may enter into during the mediation process is fully binding and enforceable by any Court with jurisdiction of the dispute thereof.

**Mediation Clause (with option for arbitration)**

Any dispute arising out of or relating to this Agreement shall be, prior to any party initiating litigation, mediated under the CPR Mediation Procedures. The parties will select a mediator from the CPR Panels of Distinguished Neutrals, or in the alternative, select a mediator in a mutually agreed upon manner. Any controversy or claim arising out of or relating to this contract or the breach, termination or validity thereof, which remains unresolved 45 days after appointment of a mediator, shall be settled in arbitration by [a sole] [three] arbitrator(s) in accordance with the CPR Rules for Non-Administered Arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

**Mediation Clause with Designated Neutral**

Any dispute arising out of or relating to this Agreement shall be, prior to any party initiating litigation, mediated under the CPR Mediation Procedures. The party's have selected Name of Mediator to serve 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 Name of Mediator becomes unwilling or unable to serve, the parties have selected Name of Mediator #2 as the alternate mediator. In the event that neither of these mediators is willing or able to serve, the parties will agree on a substitute mediator from the CPR Panels of Distinguished Neutrals, or in the alternative, select a mediator in a mutually agreed upon manner.

**Arbitration Clause**

Any controversy or claim arising out of or relating to this contract or the breach, termination or validity thereof, shall be resolved by arbitration in accordance with the CPR Rules for Non-Administered Arbitration by [a sole arbitrator] [three independent and impartial arbitrators, of whom each party shall designate one] [three independent and impartial arbitrators, none of whom shall be appointed by the parties]. The arbitration shall be governed by the Federal Arbitration Act, 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 \_\_\_\_\_. [The arbitrator(s) [are][are not] empowered to award damages in excess of compensatory damages [and each party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved by arbitration].