

Sample Dispute Resolution Contract Clauses

Judicate West is proud to offer sample dispute resolution clauses that may be inserted into contracts before or after a dispute arises between contracting parties.

Judicate West believes in the power of choice. No party should be faced with a lack of meaningful choice when deciding on an alternative dispute resolution neutral or provider. Parties should feel confident in the integrity of the alternative dispute resolution process and have the right to choose an alternative dispute resolution neutral who best fits the needs of their case. For this reason, each of the sample dispute resolution clauses below includes a placeholder where Judicate West encourages you to list other alternative dispute resolution providers that can be chosen once a dispute arises.

For the same reason, Judicate West does not provide sample arbitration clauses for consumer matters.¹ Judicate West will not force any consumers to have their dispute administered by Judicate West, even when a non-consumer party has drafted an arbitration clause that specifies Judicate West as the alternative dispute resolution provider. Judicate West will only administer a consumer arbitration if all parties mutually consent or if specifically directed by a court order.

By suggesting possible dispute resolution clauses that parties might consider including in their contracts, Judicate West is not offering legal advice. Rather, the precise language the parties choose to incorporate into their agreement, and the legal effect of a particular clause, should be carefully weighed by the parties in the specific context of applicable law and in consultation with the advice of legal counsel.

Sample Clauses for Mediation Only

Pre-Dispute Mediation Clause

In the event any controversy arising under this agreement is not resolved through negotiations between the parties, the undersigned parties agree to participate in a non-binding mediation administered by Judicate West or [add: other ADR provider(s)].

This mediation must be conducted and completed before any party may commence a civil action or arbitration. Initiating a request for mediation tolls any applicable statute of limitations for filing a civil action or arbitration for 100 days, unless the parties agree otherwise in writing.

¹ Please review California Civil Code § 1761 and the California Rule of Court Ethics Standards for Neutral Arbitrators in Contractual Arbitrations, Standard 2(e) for definitions of “consumer.”

Each side shall split the chosen ADR provider's and the mediator's fees equally unless otherwise agreed upon by the parties in writing.

If the parties cannot agree on a mediator within 14 days of requesting a mediation session from a chosen ADR provider, any party may ask the selected ADR provider to provide 5 names of potential mediators. These names will be provided by the selected ADR provider based on various considerations, including those potential mediators' substantive and procedural knowledge, availability, and location. Each side will have 14 days to strike 2 names and rank the remaining names. The numbers will be added together and the mediator whose rank is the lowest, which is most favorable, will be chosen.

The mediation shall be completed within 90 days of the selection of the mediator unless otherwise agreed upon by the parties in writing. The mediation shall take place in a mutually agreed physical or virtual location or, if the parties cannot agree, at a location selected by the ADR provider that is accessible to all parties. The mediation will be conducted under California Evidence Code § 1115 *et seq.* [or other applicable state laws regarding mediation].

Post-Dispute Mediation Agreement

1. Notwithstanding any other dispute resolution process that may be set forth in the attached agreement of the parties ("the Underlying Agreement"), the undersigned parties and attorneys have agreed to mediate this matter before [insert: Judicate West or other selected ADR provider]. This mediation is subject to California Evidence Code §1115 *et seq.* [or other applicable state laws regarding mediation], and all communications in this mediation, including settlement proposals, are confidential and may not be referred to in any later proceeding or reported to a judge or other hearing officer.
2. The mediator will serve as a neutral intermediary to facilitate communication, constructive negotiation, and settlement of this matter. The mediator does not represent or advocate for any party. Statements by the mediator, even regarding legal issues, do not constitute legal advice, but are mere statements of personal opinion. Any help by the mediator in the preparation of a settlement agreement (including the use of any sample forms provided by the mediator or ADR provider) will not constitute legal advice. Any such agreement should be independently reviewed and approved by counsel and parties.
3. Should the mediation process continue beyond the initial session, all such further communication shall be subject to this agreement.
4. This agreement for mediation extends to all present or future civil, judicial, administrative, quasi-judicial, arbitration, or other proceedings of any kind involving the same dispute or as otherwise set forth in the parties' written contractual agreement.

Sample Clauses for Arbitration or Multi-Step Dispute Resolution

Pre-Dispute Arbitration Agreement – For Commercial Contracts Only

Any dispute, claim, or controversy arising out of or relating to this contract, including the scope, interpretation, breach, or validity thereof, will be resolved by binding arbitration administered by Judicate West or [add: other ADR provider(s)]. The arbitration shall proceed in accordance with the commercial arbitration rules of the chosen ADR provider (e.g., Judicate West's Commercial Arbitration Rules). It shall be conducted by [select one: a sole arbitrator or a panel of three arbitrators]. The parties shall maintain the confidential nature of the arbitration except as may be necessary to seek a judicial challenge to an award or its enforcement or unless otherwise required by law or judicial decision. Judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction. The place of the arbitration will be [select: city, state].

Pre-Dispute Multi-Step Dispute Resolution Process – For Commercial Contracts Only

Any dispute, claim, or controversy arising out of or relating to this contract, including the scope, interpretation, breach, or validity thereof, will be administered by Judicate West or [other ADR provider] in [insert: city or county for dispute resolution] and resolved according to this multi-step dispute resolution process:

- The parties shall first attempt in good faith to resolve any dispute arising out of or relating to this contract by direct negotiations between them. The negotiation process shall be initiated by a party's providing written notice to all other interested parties of an unresolved dispute requiring discussion.
- If the parties are unable to resolve their dispute by means of such negotiations, either party shall initiate formal, non-binding mediation by contacting Judicate West or [other ADR provider] to schedule a session with a mutually-agreeable independent neutral at a mutually-agreeable remote "location" or physical location. If the parties cannot agree on the selection of a neutral, the selected ADR provider will follow its standard selection procedures, such as a strike and rank process, to identify one. A party cannot initiate formal mediation until at least 30 days have passed from a party's providing written notice to the other party of an unresolved dispute. The parties must make best efforts to schedule the mediation within 3 months, but in no event shall it occur more than 6 months from the date an ADR provider is contacted.
- If mediation is unsuccessful or not willfully participatory by either party, the dispute shall be submitted by either party to binding arbitration administered by Judicate West or [other ADR provider] under the commercial arbitration rules of the selected ADR provider in effect as of the date the arbitration is deemed filed. The dispute shall be

heard by a single arbitrator appointed by mutual agreement of the parties or, if the parties cannot agree, appointed consistent with the ADR provider's specified procedures.

- The parties agree to reasonable discovery or discovery as otherwise permitted by law for the arbitration, but that the appointed arbitrator shall retain full authority to shape the proceeding as appropriate based on the applicable commercial arbitration rules of the provider and the nature of the dispute, including with appropriate limits and procedures relating to, for example, motion practice, discovery, and the arbitration hearing. The Arbitrator shall award reasonable fees and costs to the prevailing party incurred in connection with the arbitration. In no event shall the Arbitrator award punitive or exemplary damages, except where expressly permitted by statute. The parties shall maintain the confidential nature of the arbitration except as may be necessary to seek a judicial challenge to an award or its enforcement or unless otherwise required by law or judicial decision. Judgment on the Award may be entered in any court having jurisdiction.

Post-Dispute Arbitration Agreement – For Commercial Contracts Only

Notwithstanding any other dispute resolution process that may be set forth in the attached agreement of the parties ("the Underlying Agreement"), we, the undersigned parties, agree to submit any and all disputes between us related to the Underlying Agreement to be resolved by binding arbitration administered by [insert: Judicate West or other selected ADR provider]. The arbitration shall proceed in accordance with the commercial arbitration rules of the chosen ADR provider (e.g., Judicate West's Commercial Arbitration Rules). It shall be conducted by [select one: a sole arbitrator or a panel of three arbitrators]. The parties shall maintain the confidential nature of the arbitration except as may be necessary to seek a judicial challenge to an award or its enforcement or unless otherwise required by law or judicial decision. Judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction. The place of the arbitration will be [select: city, state].