



AAA NON-BINDING DISPUTE RESOLUTION SERVICES GUIDE TO DRAFTING CONTRACT CLAUSES

Non-Binding Dispute Resolution Services for Businesses and Consumers
Non-Binding Dispute Resolution Services for Employers and Employees

GUIDE TO DRAFTING CONTRACT CLAUSES

The following are sample pre-dispute contract clauses for parties who wish to promote mutual settlement of disputes through use of AAA® Non-Binding Services including Mediation and Non-Binding Arbitration.

THE MATERIAL COVERS:

- 1. General Pre-Dispute Clauses.**
- 2. Pre-Dispute Clauses For Contracts That Businesses Enter With Consumers.**

If parties wish to opt for non-binding dispute resolution to resolve an existing dispute that is not already covered contractually by an alternative dispute resolution provision, they may submit a case filing form to the AAA.

Pre-Dispute Clauses For General Use

NON-BINDING ARBITRATION

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be submitted to non-binding arbitration administered by the American Arbitration Association under its Non-Binding Arbitration Rules for Consumer Disputes and Business Disputes before the parties may initiate arbitration, litigation or some other type of dispute resolution process.

MEDIATION

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation or some other dispute resolution procedure.

Pre-Dispute Clauses Between Businesses And Consumers

There are three variations of both Mediation and Non-Binding Arbitration Clauses:

- **Standard** — applicable to all agreements.
- **Check-Off** — when it is preferred to have the consumer check off and initial a selection box to affirmatively indicate agreement to the non-binding ADR.
- **Business Pre-Commitment** — when it is preferred that the business commit in advance (pre-dispute) to use non-binding ADR, but allow the consumer to opt in after the dispute arises (post-dispute).

STANDARD CLAUSES

NON-BINDING ARBITRATION: STANDARD CLAUSE

NOTICE OF NON-BINDING ARBITRATION AGREEMENT: It is the intent of the parties to resolve any disputes between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the parties acknowledge that if a dispute arises out of or relates to this agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to submit their dispute to non-binding arbitration administered by the American Arbitration Association under its Non-Binding Arbitration Rules before resorting to binding arbitration, litigation, or some other dispute resolution procedure.

The parties recognize that non-binding arbitration is a process to assist them to resolve their disputes by making their own free and informed choices, and that the neutral will have no authority to impose a binding award on any party but only to issue an advisory decision. The non-binding award cannot be entered as a judgment in any court, except on mutual consent of the parties, nor can it be cited as evidence or precedent with any preclusive effect in any court, arbitration, or other proceeding. If the non-binding arbitration is not completed and parties do not reach a mutually agreeable settlement within 120 days after initiation of the non-binding arbitration, they may pursue any other dispute resolution method available to them, or they may mutually agree to extend the time for non-binding arbitration.

The non-binding arbitration will take place at a reasonably convenient location to be agreed upon by the parties or determined by the arbitrator. In addition, the parties will cooperate in using telephone, or video conference or online options when the technology is available, to ensure that the process is as cost efficient and equitable for all parties as is practicable.

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Administrative fees and arbitrator compensation for the process will be paid by (BUSINESS DRAFTING THE CONTRACT) unless the parties agree otherwise.

The parties may avail themselves of further information on alternative dispute resolution offered by the American Arbitration Association at its web site (currently www.adr.org).

MEDIATION: STANDARD CLAUSE

NOTICE OF MEDIATION AGREEMENT: It is the intent of the parties to resolve any disputes between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the parties acknowledge that if a dispute arises out of or relates to this agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

The parties recognize that mediation is a non-binding process to assist them to resolve their disputes by making their own free and informed choices, and that the mediator will have no authority to impose a settlement on any party but only to discuss and suggest options for resolution. If the parties do not reach a mutually agreeable settlement within 30 days after initiation of mediation, they may pursue any other dispute resolution method available to them, or they may mutually agree to extend the time for mediation.

The mediation process will take place at a reasonably convenient location to be agreed upon by the parties or determined by the mediator. At the option of (CONSUMER), mediation sessions may take place by telephone or video conference or online when the technology is available.

Administrative fees and mediator compensation for the process will be paid by (BUSINESS DRAFTING THE CONTRACT), unless the parties agree otherwise.

The parties may avail themselves of further information on alternative dispute resolution offered by the American Arbitration Association at its web site (currently www.adr.org).

CHECK-OFF CLAUSES

NON-BINDING ARBITRATION: CHECK-OFF CLAUSE

NON-BINDING ARBITRATION OPTION: THIS SECTION PROVIDES AN OPTION TO USE NON-BINDING ARBITRATION TO RESOLVE ANY DISPUTES UNDER THIS AGREEMENT. TO CHOOSE THE OPTION, CONSUMER MUST CHECK OFF AND INITIAL THE SELECTION BOX BELOW AFTER READING THE SECTION. (BUSINESS DRAFTING THE CONTRACT) AGREES TO THE TERMS OF THIS SECTION IF CONSUMER CHOOSES THE OPTION.

It is the intent of the parties to resolve any disputes between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the parties acknowledge that if a dispute arises out of or relates to this agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to submit their dispute to non-binding arbitration administered by the American Arbitration Association under its Non-Binding Arbitration Rules for Consumer Disputes and Business Disputes before resorting to binding arbitration, litigation, or some other dispute resolution procedure.

The parties recognize that non-binding arbitration is a process to assist them in resolving their disputes by making their own free and informed choices and that the neutral will have no authority to impose a binding award on any party but only to issue an advisory decision. The non-binding award cannot be entered as a judgment in any court, except on mutual consent of the parties, nor can it be cited as evidence or precedent with any preclusive effect in any court, arbitration, or other proceeding. If the non-binding arbitration is not completed and parties do not reach a mutually agreeable settlement within 120 days after initiation of the non-binding arbitration, they may pursue any other dispute resolution method available to them or the parties may mutually agree to extend the time for non-binding arbitration.

The non-binding arbitration will take place at a reasonably convenient location to be agreed upon by the parties or determined by the neutral. In addition, the parties will cooperate in using telephone or video conference or online options when the technology is available, to ensure that the process is as cost efficient and equitable for all parties as is practicable.

Administrative fees and arbitrator compensation for the non-binding process will be paid by (BUSINESS DRAFTING THE CONTRACT) unless the parties agree otherwise.

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I AM CHOOSING THE ABOVE NON-BINDING ARBITRATION OPTION BY PLACING AN "X" IN THE BOX BELOW AND INITIALING BELOW. I UNDERSTAND THAT IF I CHOOSE THE OPTION, (BUSINESS DRAFTING THE CONTRACT) AGREES TO IT AS WELL.

Initials: _____

MEDIATION: CHECK-OFF CLAUSE

MEDIATION OPTION: THIS SECTION PROVIDES AN OPTION TO MEDIATE ANY DISPUTES UNDER THIS AGREEMENT. TO CHOOSE THE OPTION, CONSUMER MUST CHECK OFF AND INITIAL THE SELECTION BOX BELOW AFTER READING THE SECTION. (BUSINESS DRAFTING THE CONTRACT) AGREES TO THE TERMS OF THIS SECTION IF CONSUMER, CHOOSES THE OPTION.

It is the intent of the parties to resolve any disputes between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the parties acknowledge that if a dispute arises out of or relates to this agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

The parties recognize that mediation is a non-binding process to assist them to resolve their disputes by making their own free and informed choices, and that the mediator will have no authority to impose a settlement on any party but only to discuss and suggest options for resolution. If the parties do not reach a mutually agreeable settlement within 30 days after initiation of mediation, they may pursue any other dispute resolution method available to them or they may mutually agree to extend the time for mediation.

The mediation process will take place at a reasonably convenient location to be agreed upon by the parties or determined by the mediator. At the option of (CONSUMER) mediation sessions may take place by telephone or video conference or online when the technology is available.

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I AM CHOOSING THE ABOVE MEDIATION OPTION BY PLACING AN "X" IN THE BOX BELOW AND INITIALING BELOW. I UNDERSTAND THAT IF I CHOOSE THE OPTION, (BUSINESS DRAFTING THE CONTRACT) AGREES TO IT AS WELL.

Initials: _____

PRE-COMMITMENT CLAUSES

NON-BINDING ARBITRATION: BUSINESS PRE-COMMITMENT CLAUSE

NON-BINDING ARBITRATION OPTION: To encourage resolution of disputes whenever possible by mutual and voluntary settlement rather than through a binding dispute resolution process, (BUSINESS DRAFTING THE CONTRACT) acknowledges that if a dispute arises out of or relates to this agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, (BUSINESS DRAFTING THE CONTRACT) agrees first to participate in non-binding arbitration administered by the American Arbitration Association pursuant to its Non-Binding Arbitration Rules for Consumer Disputes and Business Disputes before resorting to binding arbitration, litigation, or some other dispute resolution procedure, provided that (CONSUMER) delivers a written request for such non-binding arbitration to (BUSINESS DRAFTING THE CONTRACT) before any such binding arbitration, litigation, or other dispute resolution procedures is formally commenced by either party.

The parties recognize that non-binding arbitration is a process to assist them in resolving their disputes by making their own free and informed choices, and that the neutral will have no authority to impose a binding award on any party but only to issue an advisory decision. The non-binding award cannot be entered as a judgment in any court, except by mutual consent of the parties, nor can it be cited as evidence or precedent with any preclusive effect in any court, arbitration, or

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other proceeding. If the non-binding arbitration is not completed and parties do not reach a mutually agreeable settlement within 120 days after initiation of the non-binding arbitration, they may pursue any other dispute resolution method available to them or the parties may mutually agree to extend the time for non-binding arbitration.

The non-binding arbitration will take place at a reasonably convenient location to be agreed upon by the parties or determined by the neutral. In addition, the parties will cooperate in using telephone or video conference or online options when the technology is available, to ensure that the process is as cost efficient and equitable for all parties as is practicable.

Administrative fees and arbitrator compensation for the process will be paid by (BUSINESS DRAFTING THE CONTRACT), unless the parties agree otherwise.

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MEDIATION: BUSINESS PRE-COMMITMENT CLAUSE

MEDIATION OPTION: To encourage resolution of disputes whenever possible by mutual and voluntary settlement rather than through a binding dispute resolution process, (BUSINESS DRAFTING THE CONTRACT) acknowledges that if a dispute arises out of or relates to this agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, (BUSINESS DRAFTING THE CONTRACT) agrees first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure, provided that (CONSUMER) delivers a written request for such mediation to (BUSINESS DRAFTING THE CONTRACT) before any such arbitration, litigation, or other dispute resolution procedure is formally commenced by either party.

The parties recognize that mediation is a non-binding process to assist them in resolving their disputes by making their own free and informed choices, and that in any mediation conducted under this provision the mediator will have no authority to impose a settlement on any party but only to discuss and suggest options for resolution. If the parties do not reach a mutually agreeable settlement within 30 days after initiation of mediation, they may pursue any other dispute resolution method available to them or the parties may mutually agree to extend the time for mediation.

Any mediation conducted under this provision will take place at a reasonably convenient location to be agreed upon by the parties or determined by the mediator. At the option of (CONSUMER) mediation sessions may take place by telephone or video conference or online when the technology is available.

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