
MEDIATION-ARBITRATION SAMPLE CLAUSES

Prepared by KIM L. KIRN, Mediator-Arbitrator, MILES MEDIATION

SAMPLE COMBINED MEDIATION AND ARBITRATION CLAUSE:

In the event a dispute arises out of or relating to this Agreement, the parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of Miles Mediation. ("MILES") The parties shall mediate in good faith and agree to share equally in the costs of the mediation. The mediation shall be administered by the offices of MILES Mediation, 500 Broadway, Suite 1800, St. Louis, Mo. 63102 (314) 231-4642.

If such mediation is unsuccessful, such dispute shall be settled by arbitration in accordance with the Arbitration Rules of MILES which may be found at <https://milesmediation.com/rules-clauses/>. All hearings will be held in _____ (name of city) before an Arbitrator who is a licensed attorney selected by the parties. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter. The arbitrator's decision shall be final and binding and judgment may be entered thereon in any court having jurisdiction. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with arbitrator's award, the other party is entitled of costs of suit including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award. The Federal Arbitration Act (Title 9 U.S. Code Section 1 et. seq.) shall govern all arbitration and confirmation proceedings. Any party refusing to mediate shall not prevent the other party or parties from pursuing their claims in arbitration.

OR

SAMPLE MEDIATION CLAUSE:

In the event a dispute arises between the parties to this Agreement, the parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of MILES Mediation. ("MILES") The parties agree to share equally in the costs of the mediation. The mediation shall be administered by the offices of MILES Mediation, 500 Broadway, Suite 1800, St. Louis, Mo. 63102 (314) 231-4642.

OR

SAMPLE ARBITRATION CLAUSE:

In the event a dispute arises between the parties to this Agreement, the parties agree to refer the dispute to MILES Mediation ("MILES") for arbitration in

accordance with MILES Rules of Arbitration which may be found at <https://milesmediation.com/rules-clauses/>. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter. The arbitrator's decision shall be final and binding and judgment may be entered thereon in any court having jurisdiction. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs of suit including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

REMINDERS:

-In some states including Missouri, arbitration contracts are required to contain certain, very easy-to-understand language, in boldface and "ten-point capital letters," above the signature lines. Refer to the MO Uniform Arbitration Act at §§ 435.350 to 435.470.

-In Illinois arbitration clauses must be in writing. However, hospital/health care provider contracts invoking binding arbitration are also subject to the Health Care Arbitration Act which contains very specific required language (710 ILCS 15).

-The time to include mediation and arbitration clauses are during negotiations before the final version of the Agreement is agreed-upon and signed. Do not assume that when a dispute arises, the other side will agree to mediation or arbitration in the absence of a clause in the Agreement mandating mediation or arbitration.

-With respect to arbitrations, the parties could agree that the prevailing party's reasonable attorney fees shall be paid by the other party and that if a decision is split with each party prevailing on certain aspects of the case, such fees shall be determined by the arbitrator.