ARBITRATION CLAUSES IN BUSINESS AGREEMENTS

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After the major economic terms of any business agreement, its most important terms involve identifying and allocating risk. One of the biggest risks in most business, commercial, or real estate agreements is the risk of dispute and costly, protracted litigation. Arbitration agreements are one of the primary methods by which this substantial risk is limited. Rather than the parties resorting to costly litigation, they are generally required to seek resolution of their dispute before a neutral arbiter, whose decision in the matter is final and cannot be appealed. Though these agreements are effective mechanisms for dispute resolution and cost containment, they are also highly controversial and often subject to challenge. This program will provide you with a practical guide the law governing arbitration agreements and drafting their major provisions.

- Framework of law governing arbitration agreements
- Practical uses in business, commercial, and real estate transactions
- Circumstances where arbitration is effective v. ineffective
- Counseling clients about the benefits, risks, and tradeoffs of arbitration agreements
- Scope of arbitration, mandatory nature, and rules used
- Defining applicable law, arbiter selection, and method of arbitration
- Judgment on award, review by courts (if any), interim relief
- Issus related to confidentiality

Speaker:

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ARBITRATION CLAUSES

IN BUSINESS AGREEMENTS

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These materials and the accompanying presentation are intended to give an introduction to the fundamental issues attendant to the creation and enforcement of arbitration agreements in the United States. There are a whole set of laws addressing international arbitration which this presentation will not cover. Neither these materials nor the presentation are intended as legal advice.

I. FRAMEWORK OF LAW GOVERNING ARBITRATION AGREEMENTS

The United States and Great Britain were pioneers in the use of arbitration to resolve their differences. The Federal Arbitration Act (FAA) of 1925 "expresses a liberal federal policy favoring arbitration agreements" and was enacted to ensure that private arbitration agreements are enforced on their own terms. The first 60 years after the FAA courts did not all arbitration for federal statutory claims under the nonarbitrability doctrine. This changed in the 1980s when the Supreme Court of began to use the FAA to require arbitration if the underlying contract contemplated arbitration would apply to federal statutory claims. Courts routinely enforce arbitration provisions and there is a strong presumption in favor of the existence of arbitration if there is language in the contract providing for arbitration.

The 2010 Supreme Court case of *Granite Rock v. International Brotherhood of Teamsters* endeavored to clarify the proper framework for determining when particular disputes are subject to arbitration. Ultimately, the Court made it clear that the presumption in favor of arbitration has no applicability to the question of whether a contract containing an arbitration clause was formed in the first place. *Granite Rock* also confirms that the threshold issue as to whether a contract was formed in the first place, and therefore the validity of the arbitration agreement, is determined by a court.

The U.S. Supreme Court has also held however, that when the parties' intent to empower the arbitrator to determine arbitrability is clear and unmistakable, the arbitration agreement should be enforced. For example, if the agreement states it shall be interpreted and enforced under American Arbitration Association ("AAA") rules, then the AAA rules will be used to determine even the threshold question of arbitrability. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449 (2006) (where the Supreme Court held that when a party to an arbitration agreement challenges the validity of the agreement but not the arbitration provisions of that agreement, it is the arbitrator who considers the validity challenge, not the court). Under AAA rules, the arbitrator will decide in the first instance if the case should be arbitrated. "One of those rules states that 'the arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part.'" AAA Commercial Arbitration Rule 7(b)). The threshold question of arbitrability is also for the arbitrator under AAA rule 7(a), which states: The arbitrator shall have the power to rule on his or her jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

Incorporation of the AAA Rules within the dispute provision "clearly and unmistakably shows the parties' intent to delegate the issue of determining arbitrability to an arbitrator." *Qualcomm Inc. v. Nokia Corp.*, 466 F.3d 1366, 1374 (Fed. Cir. 2006). This rule has been followed by courts in at least the following circuits: Federal, 1st, 2nd, 7th, 10th and 11th - and in California

II. BASIS TO COMPEL ARBITRATION, SCOPE OF ARBITRATION, AND RULES USED

A. When is Arbitration Mandatory Versus Permissive

Parties may submit their disputes to arbitration voluntarily or if there is a contract compelling arbitration. Courts have consistently held that the Federal Arbitration Act (or an equivalent state law, if the FAA does not apply) manifests a presumption in favor of arbitration and that this presumption requires the scope of an arbitration clause to be broadly construed.

Under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1. *et seq*., a contract involving interstate commerce is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. There is a strong presumption in favor of arbitration. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 204 n. 1 (1985). Where there is ambiguity or doubt regarding the arbitration provision, arbitration will be favored and "only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail." *Nestle Waters N. Am., Inc. v. Bollman*, 505 F.3d 498, 501–02 (6th Cir. 2007).

> MANDATORY ARBITRATION. Purchaser and TruGreen agree that any claim, dispute or controversy (Claim) between them or against the other or the employees, agents or assigns of the other, and any Claim arising from or relating to this agreement or the relationships which result from this agreement including but not limited to any tort or statutory Claim shall by resolved by neutral binding arbitration by the American Arbitration Association (AAA), under the Rules of the AAA in effect at the time the Claim is filed (AAA Rules). . . . Each party shall be responsible for paying its own attorneys' fees, costs and expenses, the arbitration fees and arbitrator compensation shall be payable as provided in the AAA Rules. However, for a Claim of $15,000 or less brought by Purchaser in his/her/its individual capacity, if Purchaser so requests in writing, TruGreen will pay Purchaser's arbitration fees and arbitrator compensation due to the AAA for such Claim to the extent they exceed any filing fees that the Purchaser would pay to a court with jurisdiction over the Claim. The arbitrator's power to conduct any arbitration proceeding under this arbitration agreement shall be limited as follows: any arbitration proceeding under this agreement will not be consolidated or joined with any arbitration proceeding under any other agreement, or involving any other property or premises, and will not proceed as a class action or private attorney general action. The foregoing prohibition on consolidated, class action and private attorney general arbitrations is an essential and integral part of this arbitration clause and is not severable from the remainder of the clause. . . . This arbitration agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. 9 U.S.C. Sections 1-16. . . . Neither party shall sue the other party with respect to any matter in dispute between the parties other than for enforcement of this arbitration agreement or of the arbitrator's award. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES

> THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE, BUT THEY CHOOSE TO HAVE ANY DISPUTES DECIDED THROUGH ARBITRATION.CLASS ACTION WAIVER. Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar basis (Class Action), and the parties expressly waive any ability to maintain any Class Action in any forum whatsoever. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action. Nor shall the arbitrator have authority to make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only in a court of competent jurisdiction and not by an arbitrator. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION, HOWEVER, THEY UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY, THROUGH ARBITRATION.[1]

The presumption in favor of arbitration is not without limits. *See e.g. AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986)("[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.").

Consider the language in the following two clauses:

> The parties <u>may</u> submit any disputes arising out of this Agreement to binding arbitration.
>
> The parties <u>shall</u> submit any disputes arising out of this Agreement to binding arbitration.

Most courts addressing the question hold that language providing that a party "may" submit a dispute to arbitration requires mandatory arbitration. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 204 n. 1 (1985)("[t]he use of the permissive 'may' is not sufficient to overcome the presumption that parties are not free to avoid the contract's arbitration procedures."). The Fourth Circuit held that the arbitration clause mandated arbitration because if it did not, it "would render the clause meaningless for all practical purposes" since parties "could always voluntarily submit to arbitration." *Austin v. Owens-Brockway Glass Container, Inc.* 78 F.3d 875, 879 (4th Cir. 1996). Instead, the court interpreted the use of "may" to give the aggrieved party the choice to arbitrate or abandon the claim. *Id*. Other courts agree. *See, e.g., Local 771, I.A.T.S.E. v. RKO*

[1] Arbitration provision from TruGreen, Inc.'s Service Agreement for a TruGreen maintenance package, as cited in the United States District Court, W.D. Tennessee, Western Division in *Stevens-Bratton v. TruGreen, Inc*., January 2016.

Gen., Inc., WOR Div., 546 F.2d 1107, 1115-16 (2d. Cir. 1977) (holding arbitration was exclusive remedy under contract dispute even through the terms specified the parties "may submit" to arbitration); *Atkins v. Louisville and Nashville R.R. Co.*, 819 F.2d 644, 647-49 (6th Cir. 1987) (holding arbitration mandatory where clause uses "may"); *Bonnot v. Congress of Independent Unions*, 331 F.2d 355, 359 (8th Cir. 1964) ("The obvious purpose of the 'may language is to give an aggrieved party the choice between arbitration or the abandonment of its claim."). *United States v. Bankers Insurance Company*, 245 F.3d 315 (4th Cir. 2001), the Fourth Circuit held that an arbitration agreement's use of "permissive phraseology" was not dispositive.

Most state courts similarly hold that the use of "may" is sufficient to compel the parties to arbitration. Moreover, only one party has to compel arbitration; both parties do not have to agree to it when the contract provides for it.

Florida courts have not settled the question however on whether the use of "may" makes an arbitration clause permissive rather than mandatory.

> BEWARE: If the contract is susceptible to a conflict of laws analysis. "Arbitration under the [FAA] is a matter of consent, not coercion," and the FAA simply pre-empts state laws that regard arbitration agreements differently than other contracts. *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989).
>
> DRAFTING TIP: A significant amount of time and expense may be avoided by using "shall" versus "may" in an arbitration clause.

Case Example Interpreting Use of "May"

Benihana of Tokyo, LLC v. Benihana, Inc., 2014 U.S. Dist. LEXIS 99933, at *22 (S.D.N.Y. July 22, 2014), a case out of the Southern District of New York interpreting arbitration language under the Federal Arbitration Act. In *Benihana*, the clause at issue specified that a party *may* submit a dispute to binding arbitration, it is merely providing that neither party is in fact *required* to initiate arbitration, but if any party prefers arbitration, that method of dispute resolution will be enforced. Thus, the initiating party may choose to litigate in court, mediate, or commence some other form of dispute resolution. However, if another party prefers to arbitrate, that choice should be enforced. Conversely, if the initiating party chooses to arbitrate in the first instance, the respondent may not move the dispute to a different forum. Thus, despite its permissive-sounding language, such an arbitration clause is in effect mandatory.

B. Scope of arbitration agreement

In addition to establishing an agreement to arbitrate, the agreement must define the scope of the disputes subject to arbitration. Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *Mediterranean Enterprises, Inc., a California Corporation v. Ssangyong Corporation, a Korean Corporation, Ssangyong Construction Company, Ltd., a Korean Corporation*, 708 F.2d 1458 (9th Cir.1983); *United Steelworkers v. Warrior & Gulf Navigation Co*., 363 U.S. 574, 582, 80 S. Ct. 1347, 1353, 4 L. Ed. 2d 1409, 1417 (1960).

Parties may elect to arbitrate all disputes (including related tort claims, statutory claims, fraud and fraud in the inducement claims, etc.) or to limit the clause to claims directly arising out of

the subject agreement. Arbiters have the authority to determine their own jurisdiction where there is "clear and unmistakable" evidence that the parties intended to grant such authority.

Parties sometime carve out portions of the disputes. For example, parties may set forth a procedure in which they use experts and/or industry professionals to resolve portions of the dispute. Examples may include establishing fair market value of a business, shareholder buy out price, or resolution of technical issues. It is important to understand the differences and consequences of a broad arbitration clause versus a narrow arbitration clause. The broader the clause the more likely the parties will be compelled to arbitration for all claims and the harder it is to challenge an award. A narrow arbitration clause risks carving out certain claims, or taking the matter out of arbitration altogether, an increasing the basis to challenge an award.

> DRAFTING TIP: Be very clear on what is and is not covered by arbitration. Uncertainty in the scope can lead to protracted litigation, including an increased basis to challenge an arbitration award.

SAMPLE BROAD FORM ARBITRATION CLAUSES[2]:

- ***Commercial (U.S. domestic)*** - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- ***Construction*** - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- ***International*** - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

- ***Healthcare payor provider*** - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association pursuant to its Healthcare Payor Provider Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- ***Employment (employment plan)*** - Any controversy or claim arising out of or relating to this [employment application; employment ADR program; employment contract] shall be settled by arbitration administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the

[2] Cited from the AAA, https://www.adr.org/Clauses

arbitrator(s) may be entered in any court having jurisdiction thereof.

- ***Employment (individually negotiated employment contracts)*** - Any controversy or claim arising out of or relating to this [employment application; employment ADR program; employment contract] shall be settled by arbitration administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- ***Labor*** - Any dispute, claim, or grievance arising from or relating to the interpretation or application of this agreement shall be submitted to arbitration administered by the American Arbitration Association under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding on them

SAMPLE NARROW FORM ARBITRATION CLAUSES:

- *"All disputes arising under this Agreement..."* [precludes arbitration of matters that, while related to the agreement, do not arise out of it]

- Disputes regarding the determination of fair market value of the business and the procedure and amount for buying out a shareholder under article 4 of this Agreement shall be resolved by arbitration with a business valuation expert.

C. Post-Termination of the Underlying Contract

Another consideration is whether the arbitration clause survives termination of the underlying agreement. Parties often intend for the arbitration clause to survive termination. Termination of an agreement where arbitration is not explicitly included in a survival clause raises the issue of whether an arbitration clause will survive termination.

DRAFTING TIP: It is important to expressly state the parties' intent regarding the survival of the arbitration clause.

III. DEFINING APPLICABLE LAW, ARBITER SELECTION, AND METHOD OF ARBITRATION

A. Defining the Applicable Law

- Define which state's law applies
- Define which rules apply (*e.g.* AAA Rules)
- Verify the arbitration clause choice of law is consistent with the choice of law of the remainder of the agreement
- Analyze applicable laws in the potential states whose law may apply and consider their effect on potential disputes, including statutes of limitations, limitations on damages, enforcement of arbitration provision, and liability considerations

B. Arbiter Selection

A key part of the arbitration clause is the method for selecting arbitrators, including the number of arbitrators. Some common methods:

- Parties may request a "strike" list of arbitrators.
- Parties to an arbitration may confer and agree on a single arbitrator whom they wish to hear a particular dispute.
- Some parties mutually appoint a panel of arbitrators to be selected on a rotating basis.
- In certain types of arbitration a panel is appointed.

Under the FAA, 9 U.S. Code § 5:

> If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

Arbiter selection may also refer to the procedures employed by arbitration providers. For example AAA and JAMS have their own rules attendant to arbitration.

C. Three Panel Procedure

The usual method for a three-member panel:

- Each party picks one arbitrator.
- The chair is picked by the party-appointed arbitrators or the arbitral institution
- Award is decided by a majority

D. Method of Arbitration

1. Binding Arbitration. Similar to a trial. Involves the presentation of evidence to the arbitrator or arbitration panel for issuance of a binding decision.

2. Mediated arbitration. Commonly known as "med-arb," this is a variation of the arbitration procedure in which an impartial or neutral third party is authorized by the disputing parties to mediate their dispute until such time as they reach an

impasse. When an impasse is reached, the third party is authorized by the parties to issue a binding opinion on the cause of the impasse or the remaining issue(s) in dispute. In some cases, med-arb utilizes two outside parties--one to mediate the dispute and another to arbitrate any remaining issues after the mediation process is completed. Mediated arbitration is useful in narrowing issues more quickly than under arbitration alone and helps parties focus their resources on the true disputes.

3. Non-binding arbitration: Presentation of a dispute to an arbitrator or arbitration panel for issuance of an advisory or non-binding decision. Non-binding arbitration is appropriate for use when some or all of the following characteristics are present in a dispute: (1) the parties are looking for a quick resolution to the dispute; (2) the parties prefer a third party decision maker, but want to ensure they have a role in selecting the decision maker; and (3) the parties would like more control over the decision making process than might be possible under more formal adjudication of the dispute.

IV. CIRCUMSTANCES WHERE ARBITRATION IS EFFECTIVE V. INEFFECTIVE

Arbitration can be a streamlined forum for resolution in a non-public forum. It is often required in in labor-management, commercial, and consumer conflicts. However, arbitration is still adversarial. The advantages for some are equally seen as a disadvantage by others. While some like the informality and relaxed adherence to the rules, others fault arbitration for being too informal and potentially unjust. Many individuals still believe that only the courts, with their carefully regulated procedures can provide justice.

EFFECTIVE

- Protecting confidential business information
- Complex cases
- Preventing road map for similar claims
- Inoculating against class action
- Speeding up resolution
- Finality
- Cost control
- Discovery control
- Scheduling control
- Equitable proceedings

INEFFECTIVE

- Establishing new law
- Publicity pressure
- Unpredictable
- Lack of appeal
- Reliance on the Rules of Evidence

- Party validation
- Early resolution / summary judgment
- Constitutional/technical/cutting edge arguments fare poorly
- Not always quicker
- Can be more expensive
- Arbitration award often will not operate as collateral estoppel or res judicata

V. ISSUES RELATED TO CONFIDENTIALITY

Arbitration proceedings and awards are not public; however, the proceedings are not necessarily confidential. The parties have no general obligation to keep the existence or content of the arbitration confidential. For this reason, specific language is often added to the arbitration agreement to keep the existence or content of the arbitration confidential. Certain arbitration rules or legal provisions in certain jurisdictions contain confidentiality provisions.

Parties who wish to keep the arbitration confidential should say so in the arbitration clause. Confidentiality can encompass the following issues:

- Existence of the arbitration itself;
- Documents prepared or created for the arbitration (including pleadings and other submissions to the tribunal);
    - This can be addressed during proceedings through a protective order
- Any evidence submitted by the parties (except for documents that are publicly available); and
- Any correspondence from the arbitral organization or the tribunal (including procedural orders, interim and final awards, etc.).

VI. COUNSELING CLIENTS ABOUT THE BENEFITS, RISKS, AND TRADEOFFS OF ARBITRATION AGREEMENTS

Arbitration is not a "one size fits all" solution. When a client asks, "Should I put an arbitration clause in this agreement?" there are multiple factors that should be discussed with the client.

Pros

- Allows parties to choose their own tribunal. This is especially helpful if the dispute is involves issues which are highly technical
- Arbitration is often faster than litigation in court and often comes with deadlines for when an award will be issued
- Tend to be equitable
- Proceedings are generally non-public and can be made confidential
- Limited ability to appeal
- Arbiters often not required to apply the law
- Less rigid and formal
- Lack of public record of findings

Cons

- Waiver of access to the courts and juries
- Limited avenues for appeal, erroneous decision cannot be easily overturned
- Arbiters are not required to apply the law
- Ability to request unreasoned award
- Arbitrators are generally unable to enforce interlocutory measures against a party, making it easier for a party to take steps to avoid enforcement of member or a small group of members in arbitration due to increasing legal fees, without explaining to the members the adverse consequences of an unfavorable ruling
- Discovery may be more limited in arbitration or entirely nonexistent
- Unlike court judgments, arbitration awards themselves are not directly enforceable. Prevailing party may seek an order confirm an award
- Uncertainty of outcome
- Cost
- May not avoid court involvement for things like preliminary injunctive relief

VII. JUDGMENT ON AWARD, REVIEW BY COURTS (IF ANY), INTERIM RELIEF

The ability to vacate an award is extremely limited. Under the FAA (and the majority of states), an award may be vacated only where:

(1) the award was procured by corruption, fraud, or undue means;
(2) there was evident partiality or corruption in the arbitrators, or either of them;
(3) the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
(4) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

Certain states further confirm the flexibility of an arbiters decision. For example, in Colorado, "the fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award." C.R.S. § 13-22-223(1.5).

Many states hold that there is no statutory deadline to file a motion to confirm an arbitration award. *See e.g. Estate of Guido v. Exempla, Inc*., 292 P.3d 996, 1002 (Colo. App., 2012)("Because the CUAA has deadlines for certain actions, but sets no deadline to file an application to confirm the award, we conclude that there is no deadline within the CUAA.") Once a party files a motion to confirm an award, the court shall confirm it, unless a defense to confirmation exists. Generally, the only defenses to confirmation of an award are those that support the vacating of an award and generally those must be brought within the statutory deadline.

VIII. SUMMARY CHECKLIST

Below is a checklist of considerations when drafting an arbitration clause:

1. Where should the arbitration take place
2. Should it be administered arbitration
3. Single arbiter or panel
4. How much discovery should be allowed
5. Time limits for setting hearing and issuing award
6. Confidentiality requirements
7. Provide for attorney's fees
8. Reasoned decision / findings and considerations
9. Injunctive relief
10. Expertise of the decision maker(s)
11. Prohibition against punitive damages
12. Statute of limitations issues
13. Awards of costs and fees

Thank you for listening. If you have any follow up questions, please feel free to contact me.

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