The top section of the cover features a repeating pattern of the JAMS logo, which consists of a stylized circular emblem with the letters 'JAMS' inside, set against a light green background.

JAMS, THE RESOLUTION EXPERTS

**GUIDE TO  
DISPUTE RESOLUTION  
CLAUSES FOR  
COMMERCIAL CONTRACTS**

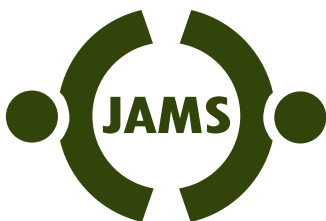
The bottom section of the cover features a repeating pattern of the JAMS logo, identical to the top section, set against a light green background.

***REVISED  
AUGUST 2006***

# **JAMS GUIDE TO DISPUTE RESOLUTION CLAUSES FOR COMMERCIAL CONTRACTS**

JAMS provides arbitration and mediation services from Resolution Centers located throughout the United States. Its arbitrators and mediators hear and resolve some of the nation's largest, most complex and contentious disputes, utilizing JAMS Rules & Procedures as well as the rules of other domestic and international arbitral institutions.

JAMS arbitrators and mediators are full-time neutrals who come from the ranks of retired state and federal judges and prominent attorneys. These highly trained and experienced ADR professionals are dedicated to the highest ethical standards of conduct.



**THE RESOLUTION EXPERTS®**

## Introduction

In today's competitive marketplace most companies either cannot afford or do not wish to incur the time, expense and adverse business consequences of traditional litigation. Unfortunately, in every business relationship there is the potential for conflict over contractual agreements or business operations. When such conflicts arise, there is no need to incur the onerous expense and delays involved in traditional litigation. There are readily available alternative dispute resolution ("ADR") procedures that will enable you to resolve your disputes relatively quickly, fairly and cost-effectively. The costs and risks of dispute resolution, as any other, can be controlled.

Planning is the key to avoiding the adverse effects of litigation. The optimal time for businesses to implement strategies for avoidance of those adverse effects is before any dispute arises. We at JAMS recommend, therefore, that whenever you negotiate or enter into a contract, you should carefully consider and decide on the procedures that will govern the resolution of any disputes that may arise in the course of the contractual relationship. This enables the company to create an enforceable dispute resolution strategy that incorporates its choice of dispute resolution forums, procedures and providers.

JAMS offers a selection of specialized Rules to govern arbitration or mediation proceedings. JAMS also offers sample dispute resolution clauses that may be inserted into a contract prior to any dispute ever arising. These sample dispute resolution clauses are set forth below.

For more information on using dispute resolution clauses, please contact your JAMS Case Manager or call 1-800-352-5267 to reach the JAMS office nearest you.

**NOTICE:** *If you incorporate any of these clauses into a contract that applies to a number of contracting parties (such as, for example, in a standard employment agreement or in a consumer agreement), please advise JAMS at 949-224-1810 as special requirements may be applicable.*

## MEDIATION

**MEDIATION** is a process in which the parties are assisted by a neutral mediator who helps them to negotiate resolution of their dispute. Mediation is a non-binding procedure, but once an agreement has been reached and documented, that agreement is binding on the parties and can be enforced. Mediation has proven to be an effective procedure for resolving disputes that cannot be resolved through direct, unassisted negotiations. Intervention by a highly skilled JAMS mediator results in resolution of contractual disputes approximately 80-90% of the time.

### Clause Providing for Compulsory Mediation Prior to Litigation:

*Except as provided herein, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the matter has been submitted to JAMS for mediation. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this Clause may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.*

## **Clauses Providing for Compulsory Mediation Followed by Arbitration (Step Clauses):**

A “step clause” provides for a mediation or other ADR process to precede an arbitration proceeding. The first Step Clause below assures the parties that a preliminary remedy in aid of arbitration will be available during the pendency of any mediation proceeding. The second Step Clause below provides no such assurance (although a preliminary remedy might otherwise be available depending upon the facts and the jurisdiction in which the application is brought), and simply provides for mediation to precede an arbitration.

### **Step Clause 1 (this Clause follows the contract’s arbitration clause):**

*Prior to the appointment of the arbitrator(s), and within 10 days from the date of commencement of the arbitration, the parties shall submit the dispute to JAMS for mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrators. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The pendency of a mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.*

### **Step Clause 2 (this Clause follows the contract’s arbitration clause):**

*The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the arbitration clause set forth above. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this Clause may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys’ fees, to be paid by the party against whom enforcement is ordered.*

## ARBITRATION

ARBITRATION provides a faster and more cost-effective method of obtaining a final and binding resolution of a dispute that cannot be resolved through direct or assisted negotiations. JAMS offers a distinguished panel of experienced neutrals from which you may choose your arbitrators. JAMS also provides you with a choice of arbitration rules and procedures that have been crafted to suit various types of commercial disputes. JAMS Streamlined Arbitration Rules & Procedures provide for an expedited process with minimal discovery and less formality. JAMS Comprehensive Arbitration Rules & Procedures provide for a more formal process, including more complete — yet still expedited — information exchange. We recommend that you use the Streamlined Arbitration Rules when the amount in controversy is likely to be less than \$250,000, and that you use the Comprehensive Arbitration Rules when the amount in controversy is likely to exceed that figure. However, you may agree to use either set of Arbitration Rules, regardless of the amounts in dispute.

### Standard Commercial Arbitration Clause\*

*Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in (insert the desired place of arbitration), before (one) (three) arbitrator(s). The arbitration shall be administered by JAMS pursuant to its (Comprehensive Arbitration Rules & Procedures) (Streamlined Arbitration Rules & Procedures). Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.*

*(Optional) Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.*

Sometimes contracting parties may want their agreement to allow a choice of provider organizations (JAMS being one) that can be used if a dispute arises. The following clause permits a choice between JAMS or another provider organization at the option of the first party to file the arbitration.

### Standard Commercial Arbitration Clause Naming JAMS or Another Provider\*

*Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in (insert the desired place of arbitration), before (one) (three) arbitrator(s). At the option of the first to commence an arbitration, the arbitration shall be administered either by JAMS pursuant to its (Comprehensive Arbitration Rules & Procedures) (Streamlined Arbitration Rules & Procedures), or by (name an alternate provider) pursuant to its (identify the rules that will govern). Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.*

*(Optional) Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.*

### JAMS Model International Arbitration Clause\*

*Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of (three arbitrators) (a sole arbitrator). The place of arbitration will be (location). The language to be used in the arbitral proceedings will be (language). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.*

\*The drafter should select the desired option from those provided in the parentheses.



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