

### **Sample Mediation Contract Clauses / Agreements**

*Judicate West offers sample dispute resolution clauses that may be inserted into a contract before or after a dispute has already arisen between contracting parties. The following clauses are specifically related to mediation. Please review Judicate West's arbitration resources, including Judicate West's Commercial Arbitration Rules, for other sample contract clauses for the use of alternative dispute resolution services, including sample clauses requiring multi-step dispute resolution processes. For more information on using these or other clauses, please contact Judicate West.*

*By suggesting provisions that parties might consider including in their contracts, Judicate West is not offering legal advice. Rather, the legal effect of the clause should be weighed by the parties in the specific context of whatever law is applicable.*

#### **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. This mediation must be conducted and completed before any party may commence a civil action or arbitration. Each side shall split Judicate West'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 45 days of requesting a mediation session, Judicate West will provide 5 names of potential mediators. These names will be provided based on various considerations, including those potential mediators' substantive and procedural knowledge, availability, and location. Each side will have an opportunity 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 will be conducted pursuant to, and governed by, California Evidence Code Sections 1115-1128.

### **Post-Dispute Mediation Agreement**

1. The undersigned parties and attorneys have agreed to mediate this matter. This mediation is a subject of California Evidence Code §1115-1128, 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 Judicate West) will not constitute legal advice. Any such agreement should be independently reviewed and approved by counsel and parties.
3. Disclosure of privileged information during the mediation to the Mediator or to any other participant in the mediation shall constitute a waiver of legal privilege.
4. Should the mediation process continue beyond the initial session, including any telephone communication between the Mediator and any attorney or party to this matter, all such further communication shall be subject to this agreement.
5. This agreement for mediation extends to all present or future civil, judicial, administrative, quasi judicial, arbitration, or other proceedings of any kind.