

CPR Term Sheet for Dispute Prevention and Resolution

This term sheet is intended to provide a summary of key concepts parties might consider including when drafting Dispute Prevention and Resolution Provisions to include in their transactional documents. These concepts can be tailored based on each party's needs and the circumstances. Furthermore, parties need not take an "all or nothing" approach to these concepts and may decide that only certain concepts would be beneficial for their particular contractual arrangement. In CPR's Dispute Prevention Library of Resources, it has included Model Dispute Prevention and Resolution provisions, which propose language that can be included in transaction documents to operationalize a turn-key solution for dispute prevention and avoidance (<https://www.cpradr.org/resource-center/dispute-prevention>)

<p>A. Relationship Maintenance & Dispute Prevention</p>		<p>1. <u>Intention of the Parties</u>: An acknowledgement that, in order to maximize mutual benefits derived from the relationship, each party will need to (i) maintain open channels of communications and regularly discuss with the other party the status of their business relationship, and (ii) identify facts and circumstances that may result in disputes.</p> <p>2. <u>Business Partner Pledge</u>: A non-binding pledge of the parties to cooperate and collaborate with each other in the spirit of dispute avoidance and prevention.</p> <p>3. <u>Party Representatives</u>: Appointment of employee representative responsible for (i) monitoring performance of the party's obligations (ii) managing the business relationship with other party and (iii) identifying any issue that has or may become a basis for a dispute.</p> <p>See <u>Exhibit A</u> for sample contract provisions for items 1 – 3 above.</p>
		<p>4. <u>Relationship Facilitator</u>: The parties can choose to identify a Relationship Facilitator at the outset of their business relationship. The Relationship Facilitator is an impartial neutral who is engaged by the parties to assist them with managing their business relationship and/or resolving disputes. Parties can choose to deploy the Relationship Facilitator in a variety of ways, including asking the Relationship Facilitator to simply standby until needed.</p> <p>See <u>Exhibit B</u> for sample contract provisions for selection of the Relationship Facilitator.</p>
		<p>5. <u>Meeting of the Representatives (and Relationship Facilitator)</u>: Regular meetings between parties' representatives (and the Relationship Facilitator, if the parties so choose) to discuss the performance of the parties and any potential issues. (<u>Optional Progress Report</u>: Draft reports provided to other party (and Relationship Facilitator) outlining the performance of its own obligations, including any areas of concern, and an assessment of business relationship.)</p> <p>See <u>Exhibit C</u> for sample contract provisions for provisions addressing meetings of the Representatives and Relationship Facilitator.</p>

B. Dispute Resolution	<ol style="list-style-type: none"> 1. <u>Dispute Notice</u>: Delivery of written notice of a disputed matter to other party, which provides the basis for the dispute, the provisions of the underlying agreement that the claimant believes were breached and, to the extent then known, the number of losses. 2. <u>Representative Consultation</u>: Consideration of the disputed matter by the parties' representatives (and the Relationship Facilitator, if desired), who meet and attempt to resolve the dispute within a specified timeframe. 3. <u>Executive Consultation</u>: If the parties' representatives are unsuccessful in resolving the dispute, it is escalated to executive officers of each party. These executive officers (and the Relationship Facilitator, if desired), meet and attempt to resolve the dispute within a specified timeframe. <p>See <u>Exhibit D</u> for sample contract provisions for items 1 – 3 above.</p>
	<ol style="list-style-type: none"> 4. <u>Mediation</u>: If the executive officers are unsuccessful in resolving the dispute, the parties submit the dispute to a mediator (who would be the Relationship Facilitator, if desired) to help the parties resolve the dispute through mediation. If the parties are still unable to successfully resolve their dispute, either party can opt to have the mediator issue a report with a proposed settlement, which the parties may choose to accept or continue onto arbitration. <p>See <u>Exhibit E</u> for sample contract provisions addressing mediation with the Relationship Facilitator.</p>
	<ol style="list-style-type: none"> 5. <u>Binding Arbitration</u>: The parties utilize binding arbitration as the last resort in the dispute resolution process. 6. <u>Escalation of Process</u>: If either party, in good faith, believes a specific step in the dispute resolution process outlined above will not resolve the dispute or add material value to the process, then such party may deliver written notice to the other party to bypass all or a portion of the escalation process. <p>See <u>Exhibit F</u> for sample contract provisions addressing items 5 – 6 above.</p>