

Commercial Arbitration Clause Drafting Checklist

- ✓ Have you considered the scope of the arbitration? All disputes, or select ones?
- ✓ Is there a delegation of authority to determine arbitrability to arbitrator?
- ✓ Should it be a sole or tripartite arbitration?
- ✓ Will this be an institutional arbitration or ad hoc?
- ✓ What rules will apply? Remember it is critical to clarify which rules will apply: different JAMS Rules, CCP, Federal Rules, etc.
- ✓ Have you specified a venue/location of arbitration? Remember caveats for different types of cases.
- ✓ Did you address special discovery provisions or limitations?
- ✓ Have you specified governing and procedural law?
- ✓ Have you specified mediation first? Some cases and/or business relationships might benefit from mediation before arbitration.
- ✓ Is there an allocation of fees and costs?
- ✓ Did you insert language regarding attorney fees clause if necessary?