

As an attorney who sometimes drafted development contracts, I often recommended a mid-project min-arbitration clause. Essentially, the customer and the developer would agree on a few people who could serve as arbitrators. These were technical people, trusted by both sides. I recommended that they contact the individuals and pay a retainer to ensure availability (though no one actually did this). At dispute time, under the agreement, we would go down the list, until one of the people was available and willing to fly out. The arbitrator would come, hear a pair of presentations (up to 2 hours), ask questions, could entertain brief rebuttals, and would then retire for the night. The next day, if the parties had not already settled the dispute, the arbitrator would make a decision. In my experience, people were willing to agree to such resolution for disputes for up to a fixed sum, such as \$50,000.

None of my clients ever had to rely on the clauses, so I have not personally seen the arbitrations. Some clients, realizing that they were on the road to an arbitration (so their dispute could not continue indefinitely) settled before we resorted to contacting the arbitrators.

The advantage to this clause is that it preserves the deal and the project. It yields a business decision, quickly, that enables the parties to move forward.

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