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CONTRACTUAL ARBITRATION CLAUSES: ARBITRATOR SELECTION AND QUALIFICATIONS

An increasing number of contracts contain arbitration clauses. But not all arbitration clauses are equally clear, precise, and specific–or equally enforceable.

Like other contract clauses, an arbitration clause may be invalidated under general principles of contract law. The U.S. Supreme Court has ruled that an arbitration clause may be invalid if it is indefinite, fraudulent or unconscionable, or was agreed upon under duress. As a result, commercial arbitration clauses should be clear and specific.

Before agreeing to an arbitration clause, consider how you would want any future arbitration to proceed, and the circumstances under which arbitration would be required.

For instance, consider whether you would like to use the services of a specific alternative dispute resolution provider, such as the American Arbitration Association. If you are considering such a provider, you might wish to examine its sample arbitration clauses and compare them to your own.

Next, consider the process established to select the arbitrator or arbitrators. Do you want to present your dispute to a single arbitrator or to an arbitration panel? For example, some arbitration clauses specify a panel of three arbitrators: each party picks one arbitrator, and then those two arbitrators choose the third arbitrator.

In addition to considering *how* the arbitrator will be chosen, you also should consider *who* will be qualified to serve as an arbitrator. For example, do you want the arbitrator to have relevant experience in a particular subject area (like architecture, engineering, software, publishing, or employment) or a particular qualification (like a CPA or a JD)? By considering these sort of issues prior to entering into an arbitration agreement, you can reduce the risk of future conflicts and add a degree of certainty to the arbitration process.

If you have any question, please contact Grant Killoran at grant.killoran@wilaw.com or 414-276-5000.