

## **Checklist for Drafting an ADR Clause in a Healthcare Transaction**

### *Considerations that favor choosing ADR over court litigation:*

- ☐ Is there a need for an expert tribunal?
- ☐ Do you desire an expedited process?
- ☐ Do you want to expand/limit the remedies available (*i.e.*, injunctive relief)?
- ☐ Is there a need or desire for confidentiality in the proceedings?
- ☐ Do you wish to predetermine allocation of attorneys' fees and costs?
- ☐ Do you wish to employ a dispute resolution method distinct from traditional litigation (*i.e.* mandatory mediation, Baseball Arbitration)?

### *Considerations that favor choosing court litigation over ADR:*

- ☐ Is an expert tribunal for this type of dispute unnecessary or detrimental?
- ☐ Do you want a right to a traditional appeal to an appellate court?
- ☐ Will a potential dispute require extensive, more traditional discovery?
- ☐ Are there potential downsides to an expedited process?

### *Provisions to consider including in or excluding from your ADR clause:*

- ☐ An opt-out provision, either generally applicable or under certain circumstances
- ☐ Statement of purpose reflecting the reasons for electing an ADR process
- ☐ Venue/Forum clause
- ☐ Choice of law clause
- ☐ Scope of ADR clause
- ☐ Mandatory/Optional informal negotiation and/or mediation clause
- ☐ ADR service provider and applicable procedural rules clause(s)
- ☐ Mediator/Arbitrator selection clause
- ☐ Provisions for the scope of discovery in arbitration
- ☐ Form/Scope of arbitration award clause
- ☐ Attorneys' fees and costs allocation clause
- ☐ Right of appeal clause