

Mediation Rules

1. Agreement of Parties

Whenever parties have agreed in writing to mediate disputes under these *Rules*, or have provided for mediation or conciliation of existing or future disputes under the auspices of ADR Bahamas, these Rules shall be deemed a part of their agreement.

The parties by mutual agreement may vary any part of these Rules including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the auspices of ADR Bahamas by making a request for mediation to ADR Bahamas' office, via telephone, email, regular mail or fax. Requests for mediation may also be filed online at www.adrbahamas.org.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to ADR Bahamas and the other party or parties as applicable:

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific requirements.

Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of ADR Bahamas a party may request ADR Bahamas to invite another party to participate in "mediation by voluntary submission". Upon receipt of such a request, ADR Bahamas will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to ADR Bahamas.

4. **Appointment of the Mediator**

Parties may search the online profiles of the ADR Bahamas' Panel of Mediators at www.adrbahamas.org in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- (i) Upon receipt of a request for mediation, ADR Bahamas will provide an available mediator or will send to each party a list of mediators from ADR Bahamas' Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise ADR Bahamas of their agreement.
- (ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to ADR Bahamas. If a party does not return the list within 3 business days, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, ADR Bahamas shall invite a mediator to serve.
- (iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, ADR Bahamas shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

5. **Mediator's Impartiality and Duty to Disclose**

ADR Bahamas mediators are required to abide by these *Mediation Rules*. These Rules require mediators to (i) decline mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, ADR Bahamas mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. ADR Bahamas mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time frame desired by the parties. Upon receipt of such disclosures, the ADR Bahamas shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediators, waive such conflicts and proceed with the mediation. In the event that a party

disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

6. Vacancies

If any mediator shall become unwilling or unable to serve, ADR Bahamas will appoint another mediator, unless the parties agree otherwise, in accordance with section 4.

7. Duties and Responsibilities of the Mediator

- (i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- (ii) The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- (iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- (iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
- (v) In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

9. Privacy

Mediation conferences and related mediation communications are private proceedings. The parties and their representatives may attend mediation conferences. Other persons may attend only with the permission of the parties and with the consent of the mediator.

10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- (i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- (ii) Admissions made by a party or other participant in the course of the mediation proceedings;
- (iii) Proposals made or views expressed by the mediator; or
- (iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by mediator.

11. No Stenographic Record

There shall be no stenographic record of the mediation process.

12. Termination of Mediation

The mediation shall be terminated:

- (i) By the execution of a settlement agreement by the parties; or

- (ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- (iii) By written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

13. Exclusion of Liability

Neither ADR Bahamas nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither ADR Bahamas nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these Rules.

14. Interpretation and Application of Procedures

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by ADR Bahamas.

15. Deposits

Unless otherwise directed by the mediator, ADR Bahamas will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

16. Expenses

All expenses of the mediation, including required travelling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

17. Cost of the Mediation

There is no filing fee to initiate mediation or a fee to request ADR Bahamas to invite parties to mediate.

The cost of mediation is based on the hourly mediation rate published on ADR Bahamas' website. This rate covers both mediator compensation and an allocated portion for the ADR

Bahamas services. There is a \$1,000.00 minimum charge for a mediation conference. Expenses referenced in Section 16 may also apply.

If a matter submitted for mediation is withdrawn or cancelled or results in a settlement after the agreement to mediate is filed but 7 days prior to the mediation conference the cost is \$500.00.

The parties will be billed equally for all costs unless they agree otherwise.

18. Language

If the parties have not agreed otherwise, the language(s) of the mediation shall be that of the documents containing the mediation agreement.

19. Conference Room Rental

The costs described above do not automatically include the use of conference rooms. Some Conference rooms are available on a rental basis.

20. Variation of Rules

These Rules, including any Schedules added hereto, may be varied by agreement of the parties.

21. Application

If the parties have been contract or by mutual agreement provided for the Mediation of their disputes in accordance with these Rules, they shall be deemed to have incorporated these Rules into their Mediation Agreement. If the Rules are amended by ADR Bahamas, the Rules applicable to any dispute shall be these Rules, as amended, as of the date the Mediation is initiated.

To the extent that these Rules conflict with legislation, these Rules shall apply except to the extent that the parties may not lawfully contract out of the provisions of any such legislation, rules, or orders. A failure to comply with these Rules is an irregularity and does not render the Mediation or a step, document, or settlement agreement a nullity.

If you have questions about mediation cost or services visit our website at www.adrbahamas.org or contact us at +1 242.394.7800.

