

## **THE MEDIATION PROCESS**

The mediation process includes the following steps:

- (a) Initial Contact (telephone or face-to-face): The mediator explains the process, ground rules, fee arrangements, and answers questions.
- (b) Opening Meeting (face-to-face or telephone conference call): The mediator invites each party to offer a brief summary of the issue(s), and assists in planning the agenda. All parties sign an Agreement to Mediate.
- (c) Private Meeting: The mediator meets with each party individually (confidential caucus) to elicit further detail on the important interests and facts.
- (d) The mediator continues with individual meetings (“shuttle diplomacy”) and/or joint meetings, as needed.
- (e) Throughout the process the mediator assists the parties in: identifying interests and options, and cooperating with one another to secure additional information (for example, appraisals, testimony of experts), all with a view to reaching an agreement.
- (f) If more time is needed, or if the parties require further data before reaching an agreement, additional meetings may be scheduled.
- (g) Once an agreement is reached, the mediator assists the parties in planning all steps for implementation, including drafting a memorandum of agreement.
- (h) If the parties reach an impasse, the mediator assists them in deciding whether to schedule further mediation or to pursue other avenues for resolution.

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# MEDIATION GROUND RULES

## Introduction

The purpose of these ground rules is to define the mediation process and to serve as a guide for the parties in deciding whether or not to use mediation to solve a business problem or resolve a conflict.

### *Section 1: General Principles*

- a. Definition of Mediation. Mediation is a process through which a third party assists two or more other parties in reaching agreement on any issue. Mediation may be used as a part of a planning process (before there is a problem or conflict), or as method for formal dispute resolution. Mediation is to be distinguished from arbitration and litigation, in which third parties (judge, panel, jury) decide the matter for the parties.
- b. Outcome(s). The objective of mediation is for the parties to reach agreement on steps to be taken to go forward with a plan, solve a problem, resolve a conflict, or settle a dispute.
- c. Structure of the Process. The mediator will provide information to the parties who inquire about mediation (through telephone contacts with all parties, including follow-up with written materials), and then schedule a joint opening meeting. The remainder of the process will include a combination of individual, confidential caucuses (private meetings with each party), joint meetings, and/or shuttle meetings until the parties reach either an agreement or an impasse. The process may be stopped at any time by the mediator declaring an impasse, or by one or more parties stopping participation.

### *Section 2: The Role of the Mediator(s)*

- a. The Mediator will provide information to the parties regarding mediation, clarify ground rules, and structure a process for balanced discussion of the issues.
- b. The Mediator will strive to maintain an impartial stance, and will disclose any relevant biases or conflicts of interest to the parties.
- c. The Mediator will also explain fees, confidentiality, and other aspects of the process required for the parties to make a decision regarding participation.

### *Section 3: Role of the Parties*

- a. By participating in the mediation process, the parties agree to work with the Mediator and with the other parties in defining interests, generating relevant background information, and creating possible solutions.

- b. Since participation is voluntary, the parties are not bound to accept any solutions proposed during mediation. Similarly, the parties may at any time terminate the process, and pursue other options for dispute resolution.

***Section 4: Attorney Representation and Consultation***

- a. The parties may seek independent legal consultation at any time during the mediation process.
- b. The parties may also be represented by counsel during the mediation.

***Section 5: Confidentiality***

- a. The Mediator will maintain the confidentiality of all information developed and produced during mediation process, and will not disclose information to anyone outside the process without permission of the parties.
- b. By participation in the process, the parties waive their right to subpoena the Mediator in any subsequent litigation, and waive the right to require the Mediator to produce documents generated during the mediation.

***Section 6: Agreement to Mediate***

By signing the Agreement to Mediate, the parties indicate their willingness to abide by the mediation rules throughout the duration of the mediation process.

***Section 7: Fees***

The Mediator will charge an hourly fee, which will be shared equally by the parties, unless arranged otherwise at the start of mediation.

***Section 8: Cancellation***

If a party desires to cancel a mediation appointment, he or she will notify the Mediator (and, if applicable, other parties) not less than 24 hours prior to the scheduled session. Otherwise the Mediator will be entitled to compensation for the canceled mediation session.

***Section 9: Mediation Outcome and Termination***

If the parties reach agreement, the Mediator will propose a draft of points agreed to for review and signature by the parties.

Any party or the Mediator may declare an impasse, at which time the Mediator will assist the parties in exploring next steps after the mediation, as well as conditions under which the parties may resume mediation.

***Section 10: Interpretation of Rules***

The Mediator shall interpret these Rules in accordance with his or her sole discretion and determination, and such interpretation shall be binding upon the parties during mediation.

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**AGREEMENT TO MEDIATE**

The parties listed below wish to reach an agreement on one or more issues. For this purpose, we make the following initial agreement:

- 1. The topic(s) to be the subject of mediation is (are): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 2. The mediation process has been explained to me; I have read and agree to be bound by the Mediation Ground Rules.
  
- 3. I understand that mediation does not take the place of independent legal advice and, if necessary, will seek my own legal counsel on the issues under discussion.
  
- 4. Other stipulations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

\_\_\_\_\_  
Mediator

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