

# MEDAL RULES

## (ADR CENTER'S INTERNATIONAL MEDIATION RULES)

### **Application of Rules**

1. These Rules apply to the mediation of disputes where the parties seek the amicable settlement of such disputes and where, either by stipulation in a contract or by agreement, they have agreed that these Rules will apply. The parties may agree to vary these Rules in writing at any time.

### **Initiation of Mediation**

2. Any party or parties to a dispute wishing to initiate mediation may do so by filing with a MEDAL Member Organization (“MMO”) a submission to mediation or a written request for mediation pursuant to these Rules.

3. A party may request the MMO to invite another party to participate in mediation. Upon receipt of such a request, the MMO will contact the other party involved in the dispute and attempt to obtain an agreement to participate in mediation. Unless otherwise specified within a contract between the parties to the dispute, a period of 30 days from the date of issue shall be regarded as a reasonable time within which a party should respond to an invitation to participate in mediation.

4. A request for mediation should contain a brief statement of the nature of the dispute. It shall also set forth the contact information of all parties to the dispute and the counsel, if any, who will represent them in the mediation.

### **Appointment of the Mediator**

5. Upon receipt of a request for mediation, and if the parties have not jointly notified the MMO of their mutual choice of a mediator, the MMO will provide the parties with a list of no fewer than three persons who would, in the MMO's view, be qualified

to mediate the dispute. In compiling the list, the MMO will take into account the nationalities of the parties, the language in which the mediation will be conducted, the place of the mediation, any substantive expertise that may be required or helpful, the availability of the mediator and any known conflict of interests. Each party will number the names in the order of preference. In light of the parties' expressed preferences, the MMO will appoint the mediator. Normally, a single mediator will be appointed unless the parties agree otherwise.

### **Disclosures and Replacement of a Mediator**

6. Any mediator, whether selected jointly by the parties or appointed by the MMO, will disclose both to the MMO and to the parties whether he or she has any financial or personal interest in the outcome of the mediation or whether there is any other matter of which the mediator is aware which could be regarded as involving a conflict of interest (whether apparent, potential or actual) in the mediation. Upon receiving any such information, or in any other circumstance in which a selected mediator indicates that he or she is unable to act, after soliciting the views of the parties, the MMO may replace the mediator, preferably from the lists of acceptable mediators previously returned by the parties.

### **Representation**

7. Any party may be represented by persons of the party's choice. Representation by counsel is not required but highly recommended. Parties other than natural persons are expected to have present throughout the mediation an officer, partner or other employee with full authority to settle the dispute.

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### **Date, Time and Place of the Mediation**

8. The mediator will fix the date and the time of each mediation session. The mediation will be held at the MMO office convenient to the parties, or at such other place as the parties and the mediator agree.

### **Conduct of the Mediation and Authority of the Mediator**

9. The mediator may conduct the mediation in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes of the parties, and the need for a speedy settlement of the dispute. The mediator does not have the authority to impose a settlement on the parties. The mediator is authorized to conduct both joint and separate meetings with the parties. If requested by all parties in writing, the mediator may make oral or written recommendations concerning an appropriate resolution of the dispute.

### **Privacy**

10. Mediation sessions are private. Persons other than the parties and their representatives may attend only with the permission of the parties and with the consent of the mediator.

### **Confidentiality**

11. All information, records, reports or other documents provided to any MMO in connection with the initiation of the mediation or produced in the mediation will be confidential. The mediator and every officer or employee of the MMO will not be compelled to divulge such records or to testify or give evidence in regard to the mediation in

any adversary proceeding or judicial forum. The parties and everyone present at the mediation - including counsel and experts - will maintain the confidentiality of the mediation and will not rely upon, or introduce as evidence in any arbitral, judicial or other proceeding:

(i) views expressed or suggestions or offers made by another party or the mediator in the course of the mediation proceedings;  
(ii) admissions made by another party in the course of the mediation proceedings; or  
(iii) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by another party or by the mediator.

The requirement to confidentiality shall not apply if, and to the extent that:

(i) all parties consent to the disclosure; or  
(ii) the mediator is required under the general law to make disclosure; or  
(iii) the mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or  
(iv) the mediator reasonably considers that there is a serious risk of his/her being subject to criminal proceedings unless the information in question is disclosed.

Facts, documents or other things otherwise admissible in evidence in any arbitral, judicial or other proceeding, will not be rendered inadmissible by reason of their use in the mediation.

### **Exclusion of Liability**

12. Neither the mediator, nor the MMO or any employee or consultant engaged by it will be liable to any party for any act or omission alleged in connection with any mediation conducted under these Rules.

## **Interpretation and Application of the Rules**

13. The mediator will interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other procedures will be interpreted and applied by the MMO administering the mediation.

## **Administrative Fees**

14. Unless otherwise agreed by the parties to the mediation, all of the MMO's administrative fees and expenses, including, without limitation, the fees and expenses of the mediator, will be divided equally between or among the parties to the mediation.

## **Role of Mediator in Other Proceedings**

15. Unless all parties agree in writing, the mediator may not act as an arbitrator or as a representative of, or counsel to, a party in any arbitral or judicial proceedings relating to the dispute that was the subject of the mediation.

## **Resort to Arbitral or Judicial Proceedings**

16. The parties undertake not to initiate, during the mediation, any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation, except that a party may initiate arbitral or judicial proceedings when, in its opinion, such proceedings are either necessary to toll a limitations period, including a statute of limitations that may be applicable, or are necessary otherwise to preserve its rights in the event that the mediation is unsuccessful.

## **Referral to Another MMO**

17. In the event the parties express a preference to mediate in another MEDAL Member country, the MMO may transfer responsibility for administering the mediation to the MMO requested by the parties.

## **Governing Law and Jurisdiction**

18. The mediation shall be governed by, construed and take effect in accordance with the laws of the MMO administering the mediation. The courts of the state of such MMO shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with the mediation.

## **Termination of the Mediation**

19. Any of the parties may withdraw from the mediation at any time and shall immediately inform the mediator and the other representatives in writing. The mediation will terminate when:

- a party withdraws from the mediation; or
- the mediator, at his/her discretion, withdraws from the mediation; or
- a written settlement agreement is concluded.

The mediator may also adjourn the mediation in order to allow parties to consider specific proposals, get further information or for any other reason, which the mediator considers helpful in furthering the mediation process. The mediation will then reconvene with the agreement of the parties.

## **Settlement Agreements**

20. Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties.