



ADR Institute of Canada, Inc.
National Mediation Rules

MEDIATION RULES

I. Model Dispute Resolution Clause – Mediation

Parties who agree to mediate under these National Mediation Rules may use the following clause in their agreement:

All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from this agreement, shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. The place of mediation shall be [specify City and Province of Canada]. The language of the mediation shall be English or French [specify language].

II. Model Dispute Resolution Clause – Mediation and Arbitration

Parties who agree to mediate under these National Mediation Rules, and arbitrate under the National Arbitration Rules, may use the following clause in their agreement:

All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from this agreement, shall first be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. Despite this agreement to mediate, a party may apply to a court of competent jurisdiction or other competent authority for interim measures of protection at any time. All disputes remaining unsettled after mediation shall be arbitrated and finally resolved pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. [the Simplified Arbitration Rules of the ADR Institute of Canada, Inc.]. The place of mediation and arbitration shall be [specify City and Province of Canada]. The language of the mediation and arbitration shall be English or French [specify language].

National Mediation Rules

1. Interpretation..... 1

2. Application..... 1

3. Variation of Rules 2

4. Initiating Mediation 2

5. Appointment of Mediator 2

6. Independence and Impartiality..... 3

7. Conflict of Interest 3

8. Waiver of Conflict of Interest..... 3

9. Pre-Mediation Meeting 4

10. Mediation Agreement 4

11. Time and Place..... 4

12. Authority of the Mediator 4

13. Representation..... 5

14. Privacy 5

15. Confidentiality and Disclosure 5

16. Termination of Mediation 6

17. Exclusion of Liability 6

18. Fees and Expenses 6

19. Educational Purposes 6

SCHEDULE "A" 7

SCHEDULE "B" 8

ADR INSTITUTE OF CANADA, INC.

NATIONAL MEDIATION RULES

1. Interpretation

In these rules, unless the context otherwise requires:

- (a) "day" means a full 24-hour day but does not include Saturday, Sunday or a holiday as defined in the relevant Provincial legislation;
- (b) "Institute" means the ADR Institute of Canada, Inc., or one of its Regional Affiliates;
- (c) "Regional Affiliate" means a regionally based ADR organization designated by the Institute to provide ADR services in a specific region as requested by the Institute;
- (d) "Mediation" means the use of an impartial third party to assist the parties to resolve a dispute, but does not include an arbitration;
- (e) "Mediation Agreement" means a written agreement between the parties and the Mediator containing specific provisions for submitting a dispute to Mediation;
- (f) "Mediator" means the impartial person or persons, engaged to assist the parties to resolve a dispute, but does not include an arbitrator unless the arbitrator is acting as a mediator by consent of the parties;
- (g) "Rules" means these National Mediation Rules.

2. Application

These Rules shall apply where:

- (a) the parties have agreed that the Rules shall apply;
- (b) the parties have agreed to mediate in accordance with the Model Mediation Procedure of The Canadian Foundation for Dispute Resolution, Inc.; or
- (c) the parties have agreed to a Mediation to be administered by the Institute or the Canadian Foundation for Dispute Resolution, Inc. without reference to the rules of either body.

If these Rules are amended by the Institute, the Rules applicable to any dispute shall be the Rules, as amended, as of the date the Mediation is commenced.

To the extent that the Rules conflict with legislation of any Province of Canada or any Territory of Canada or of any legislation of Canada or any rules or orders pursuant to any such legislation, the 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 the Rules is an irregularity and does not render the Mediation or a step, document or settlement agreement a nullity.

3. Variation of Rules

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

4. Initiating Mediation

Whenever the parties have by contract or by mutual agreement provided for the Mediation of their dispute(s) in accordance with these Rules, they shall be deemed to have incorporated these Rules into their Mediation Agreement.

Any party to a dispute may initiate Mediation under these Rules by filing a written request for Mediation with the Institute together with a copy of the contract or mutual agreement providing for Mediation in accordance with these Rules and the appropriate fee as set out in Schedule "A".

5. Appointment of Mediator

If the contract or mutual agreement names a Mediator or specifies a procedure for appointing a Mediator, that nomination or procedure shall apply.

If the contract or mutual agreement does not name a Mediator or specify a procedure for appointment, the parties may request the Institute to:

- (a) appoint a Mediator; or
- (b) nominate three (3) Mediators to act in the Mediation. The Institute will provide the parties with the resumes of three nominees and the parties will select a Mediator and inform the Institute of their selection. If the parties cannot agree on a Mediator, they shall each rank (3-highest; 1-lowest) the persons nominated and the Institute shall select the person with the highest composite ranking. If rankings from the parties are equal, the Institute shall make the final decision and appoint the Mediator from the list of three nominees.

The parties shall provide general information concerning the nature and extent of the dispute required by the Institute, such as, without limitation, type of dispute, claim amount, and type of issues in dispute, to assist it in fulfilling its responsibilities under these Rules.

The Institute will forthwith inform the Mediator of his or her selection. If the Mediator appointed under (a) above is unable or unwilling to act, the Institute will appoint another Mediator. If the Mediator selected under (b) above is unable or unwilling to act, the Institute and the parties will repeat the procedure set out in (b) above.

6. Independence and Impartiality

Unless otherwise agreed by the parties, a Mediator shall be and remain, at all times, wholly independent.

A Mediator shall be and remain wholly impartial and shall not act as an advocate for any party to the Mediation.

The Mediator shall not establish a professional relationship with or act for any of the parties individually in relation to the particular dispute that is the subject matter of the Mediation in any capacity, unless all parties consent after full disclosure.

The parties accept that the Mediator is not providing legal or professional advice to any of the parties. The parties accept that the Mediator may express opinions on the matters at issue, and this shall not be construed as either advocacy on behalf of a party or as legal or professional advice to a party. The parties will at all times rely exclusively on their own advisors for legal and professional advice. The parties accept that:

- (a) the Institute is not an agent of, or acting in any capacity for, any of the parties, and
- (b) the Mediator is acting as an independent contractor and is not an agent or employee of the Institute.

7. Conflict of Interest

Prior to accepting an appointment, a Mediator shall disclose any personal interest or other conflicts of interest in the dispute, any bias or circumstances likely to give rise to a presumption of bias. Should any personal interest, conflict or bias be disclosed to the Institute, the Institute shall notify the parties. The Mediator shall disclose any such circumstances to the Institute and to the parties if they should arise at any time after the appointment of the Mediator and before the Mediation is concluded. If any party objects to the Mediator based on any such disclosure, the mediator shall withdraw from the Mediation and the Institute shall appoint another Mediator.

8. Waiver of Conflict of Interest

The parties may waive, in writing, any personal interest, conflict or bias disclosed by the Mediator under Rule 7.

Any party who knows of any personal interest, conflict or bias, whether disclosed or undisclosed, and proceeds with the Mediation without promptly stating an objection, shall be deemed to have waived the right to object.

9. **Pre-Mediation Meeting**

The Mediator will, expeditiously after being appointed, arrange a meeting or conference call with the appropriate representative or lawyer of all parties to discuss the matters set out in these Rules and all arrangements relating to the Mediation, including, without limitation, destruction of the Mediator's notes and any documents developed during the Mediation; the return of written material provided to the Mediator; disclosure of offers or counter-offers made in the course of the Mediation; whether or not any settlement agreement is required to be in writing and executed by the parties before it is binding on the parties.

10. **Mediation Agreement**

The Mediator, together with the parties, shall prepare and execute a Mediation Agreement setting out:

- (a) the terms and conditions under which the parties are engaging the Mediator;
- (b) any of these Rules which the parties agree shall not apply to the Mediation or are amended as agreed by the parties; and
- (c) any additional rules which the parties agree shall apply to the Mediation.

Should the parties be unable to agree on a Mediation Agreement, the ADR Institute of Canada, Inc. Standard Form Agreement to Mediate set out in Schedule B shall be used.

11. **Time and Place**

The Mediator shall, following consultation with the parties, fix the time of each Mediation meeting. All meetings shall be held at either a) a location in the City and Province stipulated in the model clause, if relevant, or b) at a location agreed upon by the parties and the Mediator.

12. **Authority of the Mediator**

The Mediator will attempt to assist the parties to reach a satisfactory resolution of their dispute but has no authority to impose a settlement. The Mediator is authorized to conduct joint and separate meetings with the parties in the discretion of the Mediator.

If the parties are unable to reach a settlement in the Mediation process, and if all parties and the Mediator agree, the Mediator may produce for the parties a non-binding written recommendation for terms of settlement. This recommendation will be the Mediator's reasonable attempt to find acceptable settlement terms.

The Mediator may retain experts or consultants if the parties so agree and the parties agree to pay for the expenses of such experts or consultants, in equal amounts unless otherwise agreed.

13. **Representation**

Each party must attend the Mediation. The name and address of any lawyer or agent who will attend the Mediation must be communicated, in writing, to the Mediator and to other parties at least three days prior to the first Mediation meeting. If any party intends to bring any other individuals, such as experts, advisors, or any other persons, the name(s) and capacity of such individuals must be communicated to the Mediator and the other parties at least three days prior to the first Mediation meeting.

Parties who attend must have authority to settle the dispute.

Parties may vary any of the arrangements in this Rule by agreement among all parties and with consent of the Mediator.

14. **Privacy**

The Mediation will be held in private. Only those persons authorized by Rule 13 may attend, unless otherwise agreed by the parties.

15. **Confidentiality and Disclosure**

Parties and the Mediator shall agree on the extent of documentary disclosure required for an effective Mediation, but the Mediator shall not have the power to compel the disclosure of any document.

The Mediator shall keep confidential from anyone outside the Mediation any information disclosed in the course of the Mediation including all written material provided to the Mediator, except as provided for in the Institute's Model Code of Conduct for Mediators. The parties agree to keep confidential all information and communication received or made available during the Mediation process, except as allowed below. The parties further agree that all obligations of confidentiality apply to all experts, advisors and other persons brought by the party. The Mediator shall obtain, in writing, from all experts and consultants engaged by the Mediator, similar obligations of confidentiality as are provided in this Rule.

The parties agree that Mediation sessions are without prejudice settlement negotiations and disclosures are inadmissible in any further litigation or arbitration except to the extent required by law. The parties agree not to subpoena or otherwise require the Mediator to testify or produce records or notes in any future proceedings. No transcripts will be kept of the proceedings.

The parties agree that they shall not rely on or introduce as evidence in subsequent arbitral or judicial proceedings any of the following, with the exception of information otherwise produced through the discovery process:

- (a) any views expressed, suggestions made, or offers made to or received from the other party in respect of the possible settlement of the dispute;

- (b) any admissions made by the other party in the course of the Mediation;
- (c) the fact that the other party had indicated a willingness to accept a proposal or recommendation for settlement made by the Mediator; or
- (d) proposals made or views expressed by the Mediator.

16. Termination of Mediation

The Mediation shall be terminated:

- (a) by the execution of a settlement agreement by the parties; or
- (b) by a written declaration of one or more parties that the Mediation is terminated; or
- (c) by a written declaration by the Mediator that further efforts at Mediation would not be useful.

17. Exclusion of Liability

Neither the Institute nor the Mediator shall be liable to any party for any act or omission in connection with a Mediation conducted under these Rules. In any event, neither the Institute nor the Mediator shall be responsible for any loss or damage incurred by any party or any other person arising from negligence or any other cause whatsoever.

18. Fees and Expenses

The Mediator's fee and all expenses, including travel and the rental of premises, and the costs and expenses of any expert or consultant engaged by the Mediator with the approval of the parties, shall be borne equally by the parties unless it is agreed otherwise. Such fees shall be paid directly to the Mediator in accordance with the agreement to mediate signed by the parties.

Fees to the Institute shall be paid as provided by Schedule "A".

The Mediator may require payment by the parties of an initial deposit and may require a further deposit or deposits, including proportionate shares of the costs of the Mediation.

Each party will bear its own costs and expenses for participating in the Mediation, unless otherwise agreed.

19. Educational Purposes

The Mediator and the Institute may disclose information and data about the Mediation for research and education purposes only if the parties and the dispute are not, nor may reasonably be anticipated to be, identified by such disclosure.

SCHEDULE “A”

Mediation Administrative Fee Schedule

Each party to a Mediation is required to make an advance payment or payments of amounts set by the Board of the Institute from time to time in respect of administrative expenses. This payment is not recoverable and becomes the property of the Institute.

SCHEDULE "B"

ADR Institute of Canada, Inc. Standard Form Agreement to Mediate

The parties

Party 1:	Address, Phone and Fax:
Party 2:	Address, Phone and Fax:
Party 3:	Address, Phone and Fax:
Party 4:	Address, Phone and Fax:
Mediator:	Address, Phone and Fax:

The Dispute

Short style of cause, or brief description:

Mediation

The parties will attempt to settle the Dispute by Mediation, following the provisions of this Standard Form Agreement and the National Mediation Rules of the Institute (the “Rules”), which are incorporated as part of this Agreement to Mediate. Any changes to the Rules shall be noted below:

The Mediator

The Mediator shall be bound by the Institute’s Model Code of Conduct for Mediators.

The Mediator shall discuss and arrange for the implementation of the exchange of information and briefs at least two weeks prior to the date of Mediation, unless otherwise agreed.

Fees and Expenses

All parties shall bear their own costs for the Mediation process, and shall split the cost of the Mediation and the Mediator’s fees inclusive of all deposits requested by the Mediator equally, unless otherwise agreed.

The Mediator’s fees are as follows:

Cancellation or Delay

It is agreed that any party causing either cancellation of the Mediation or a postponement within 30 business days preceding the Mediation will be responsible for all costs incurred by the Mediator, along with any cancellation fees.

Date: _____

Signed:

Party 1

Party 2

Party 3

Party 4

Mediator