



BUSINESS MEDIATION NETWORK MEDIATION RULES

The following Rules state the terms under which the Parties, their Representatives, Business Mediation Network, LLC (“BMN”) and the Mediator selected, agree to attempt, through the mediation process set forth below, to resolve a Dispute that has arisen between the Parties. These Rules may be amended or supplemented from time-to-time.

1. Initiation of Mediation.

1.1 Contract. Where the Parties have agreed to submit a dispute to mediation in accordance with these Rules, either party may initiate mediation of a Dispute under these rules by sending a written notice of mediation to BMN and to all other Parties by Express mail, overnight courier, fax or email (“Notice of Mediation”). Generally, the Notice of Mediation should contain contact information for all Parties and their Representatives, if known, a copy of the contract or other document containing the agreement to mediate and a brief description of the nature of the dispute (“Submission Information”). BMN will promptly notify the Parties of its receipt and acceptance of the Notice of Mediation. All other parties should acknowledge the Notice of Mediation within five (5) days of receipt and promptly tender to BMN any additional Submission Information and their portion of applicable Fees, Expenses.

1.2 Invitation. Where the Parties have not previously agreed to mediation, any Party to a Dispute may invite other Parties to mediate a dispute pursuant to these Rules or may request BMN to extend an invitation to other Parties. The Party initiating the invitation should supply the Submission Information to BMN. BMN will supply the Notice of Mediation to all Parties upon the acceptance of the invitation by some or all of the invited Parties.

1.3 Pending Litigation / Arbitration. Whenever the Parties are engaged in a lawsuit or arbitration, the Parties may initiate mediation consistent with the applicable rules of the court or arbitration service. In such circumstances, these Rules apply only to the extent consistent with and not superseded by such court or arbitration rules.

2. Mediator.

2.1 Appointment. Upon the receipt of the Notice of Mediation by all Parties, a Mediator will be selected as follows:

2.1.1 The Parties may jointly select a Mediator from the BMN Mediator Roster found at www.BusinessMediationNetwork.com or otherwise agree to appoint a mutually acceptable Mediator and notify BMN of the name of the Mediator appointed within five (5) business days of the delivery of the Notice.

2.1.2 In the event the parties do not notify BMN of a Mediator within five (5) business days of delivery of the Notice, BMN will recommend a BMN Mediator from the BMN Mediator Roster. Unless a Party notifies BMN within three (3) business days that the recommended Mediator is not approved, the recommendation will be deemed to be accepted.

2.1.3 If a Party does not approve the BMN Mediator recommended, or if for any reason the selected Mediator is not available or becomes unable to complete the Mediation, BMN will promptly submit to the Parties the resumes or background information of three (3) additional mediator candidates who have the requisite expertise and who are available to mediate the Dispute. The Parties will indicate their acceptance of at least two (2) of these candidates and rank the order of their preference within three (3) business days of receipt. BMN will select as the Mediator the person with the highest mutual preference and will promptly inform the Parties.

2.1.4 In the event that BMN is unable to supply a Mediator or for any reason fails to accept the Notice of Mediation within five (5) days of its receipt, the Parties will jointly appoint a mutually acceptable Mediator.

2.2 Impartiality. The Mediator will use his or her best efforts to conduct the mediation in an impartial manner and to comply in material respects with the Model Standards of Conduct for Mediators. The Mediator will make a good faith effort to disclose prior or existing personal or financial relationships with the Parties, Representatives or known participants, not including professional or incidental contact, which reasonably could be deemed to affect the Mediator's impartiality. The Parties promptly shall inform the Mediator and BMN of any known Mediator conflict. In the event facts arise or become known to the Mediator, BMN or to the Parties during the Mediation that a reasonable individual would consider likely to create a potential or actual conflict of interest for the Mediator, the Mediator, BMN and the Parties agree to disclose such facts or circumstances to the others who will then determine whether or not to proceed with the Mediation. The Mediator is a neutral and neither the Mediator nor BMN act as a lawyer for or representative of any Party and do not render legal advice.

2.3 Separate Communications. In addition to the Mediation Conference and joint conference calls or other meetings, the Mediator is expected to conduct separate meetings and have other communications with individual Parties and Representatives outside the presence of other parties, before, during, and after the Mediation Conference. These separate communications may be conducted by telephone, video conference, in writing, email, online services, in person or otherwise and are accepted by the Parties as a normal part of the Mediation process.

2.4 Observer, Mediation Support Personnel. With the prior consent of the Parties, BMN may have another mediator from the BMN Mediator Roster observe the Mediation Conference for the purpose of additional training (“Observer”) or may appoint a person for Mediation Support (“Mediation Support Personnel”) to assist the Parties and the Mediator in the administration of the Mediation including but not limited to the management of technology and documents. Any such Observer or Mediation Support Personnel will be treated as a Mediator for all purposes under these Rules.

3. Mediation Process.

3.1 Participation. Each Party shall have one person with settlement authority participate in the Mediation Conference. The Parties and their Representatives will cooperate in good faith with the Mediator and the other Parties and will conduct all communications in the Mediation process with civility and respect. Each Party may but need not have a lawyer or other Representative present throughout the Mediation. The Parties will make a good faith effort to follow these Rules and to adhere to the Mediation process in a reasonable effort to settle the Dispute; provided however, that any settlement is voluntary and no Party is required to settle. Subject to any agreement between the Parties regarding attendance at a minimum number of Mediation Conferences, any Party may terminate the mediation process by giving written notice to BMN and all other Parties. The mediation process will be deemed ended (“Termination”) when all Parties have signed the final Settlement Agreement, the Mediator declares that no settlement can be reached or when one of the Parties necessary for settlement declines to participate further; provided, however, the withdrawal of one Party does not prevent other Parties from continuing the Mediation with respect to issues between the remaining Parties.

3.2 Scheduling Conference. BMN recommends that the Parties or their Representatives participate in a conference call with BMN and/or the Mediator for the following purposes:

3.2.1 Identifying documents or other background information for the Mediator’s review or for exchange or disclosure between the Parties;

3.2.2 The submission of the Parties’ Position Statements, if any;

3.2.3 The date, time and expected duration of the Mediation Conference and whether the Mediation Conference will be conducted in person or via telephone or video conference or by other mutually acceptable means;

3.2.4 The identification of the person with settlement authority for each Party and all other persons who will attend the Mediation Conference;

3.2.5 The amount and allocation between the Parties of BMN’s fees pursuant to Section 5;

3.2.6 Any other matters concerning the mediation process.

3.3 Documents and Background Information. Unless modified by agreement, the Parties agree to provide the Mediator with copies of the documents or other background information they wish the Mediator to review three (3) days prior to the Mediation Conference. The Parties further agree to provide the Mediator with only those documents necessary to explore the possibility of settlement of the dispute and to reasonably follow the guidelines contained in Section 5 below.

3.4 Position Statements. Unless otherwise agreed, the Parties may submit Position Statements to the Mediator with a brief statement of the background and nature of the dispute. BMN requests that the Position Statements not exceed ten (10) pages and be submitted at least three (3) days prior to the Mediation Conference. The Position Statements are Confidential and will not be disclosed or discussed by the Mediator with anyone other than the submitting Party and its Representative without the prior agreement of the submitting Party.

3.5 Mediation Conference. Unless modified by agreement of the Parties, within twenty-one (21) days of the Notice, the Parties, Representatives and Mediator agree to conduct a Mediation Conference at reasonably convenient date and time. The parties may agree to conduct the Mediation Conference with personal attendance at a particular location or via telephone or video conference, using internet service or to separately discuss the matter with the Mediator without a joint conference. A Party who fails to attend a scheduled Mediation Conference without advance rescheduling consented to by the Parties and Mediator, shall pay for the costs and fees of the Mediator and the other Parties and Representatives. BMN and/or the Mediator may postpone the Mediation Conference if either Party is not in compliance with these Rules.

3.6 Settlement Agreement. The Parties determine whether to settle and the terms of any settlement. If a settlement is reached, prior to adjourning the Mediation Conference the Parties will prepare and sign a binding Settlement Agreement or a Memorandum of Understanding (“MOU”) where they agree (i) to the basic terms of settlement and (ii) to subsequently prepare and sign a more detailed Settlement Agreement. In the event that the Parties and their Representatives choose to sign a MOU pending the preparation of the more detailed Settlement Agreement or otherwise adjourn the Mediation Conference (“Adjournment”), the Mediation will remain active until the final Settlement Agreement is signed. By their participation in the Mediation, the Parties expressly acknowledge that BMN and the Mediator (i) do not represent any party, (ii) do not provide legal, financial, tax or other advice to any Party and (iii) are not responsible for preparing and do not make any representation or warranty as to the fairness, accuracy or legality of any Settlement Agreement or MOU. The Parties shall rely exclusively upon their own attorneys for legal advice. Nothing in these Rules obligates any Party to agree to settle the Dispute.

4. Confidentiality.

4.1 Non-disclosure. The Mediation shall be subject to the Uniform Mediation Act (“UMA”) and specifically to those provisions of the UMA which privilege mediation communications from disclosure, admissibility and discovery (UMA Sec. 4), the circumstances constituting waiver or preclusion of the privilege (UMA Sec. 5) and the exceptions to the privilege (UMA Sec. 6). The parties expressly agree to conduct the mediation under any statutes, rules and court decisions that similarly protect the information, communications and immunity of the Mediator that may be applicable in the state where the Mediation conference is conducted. The Parties and Representatives acknowledge that other information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use or disclosure in the Mediation.

4.2 Non-testimonial. Other than as provided in Rule 6.4, the Parties expressly agree that BMN and the Mediator are not necessary parties to any judicial proceeding relating to the Mediation or to the Dispute and shall not be parties to or witnesses in any such proceeding and either BMN nor the Mediator shall be compelled to disclose confidential information or documents or to testify with regard to the Mediation in any proceeding or in any administrative or judicial forum. The parties shall not subpoena or otherwise cause BMN or the Mediator to be called as a witness in any proceeding for the purpose of testifying about the Mediation or Mediation communications.

4.3 Non-evidentiary. The Parties shall not refer to or introduce documents or statements made solely in connection with the mediation (“Mediation Communications”) as evidence in any judicial or arbitration proceeding, unless agreed to by the Parties and Mediator or as required by law. This limitation includes the following:

4.3.1 Position Statements or any other written or oral statement made during the course of the mediation by a Party, Representative, Mediator or other participant;

4.3.2 Admissions made by a Party, Representative or other participant in the course of the mediation proceedings;

4.3.3 Proposals made or views expressed by the Mediator; or

4.3.4 The fact that a party had or had not indicated willingness to accept a proposal for settlement during the course of the mediation.

4.4 Non-public. The parties shall maintain the confidentiality of the mediation and Mediation Communications. The Mediation Conference and all other portions of the mediation process are private proceedings. Only the Parties, the Representatives, the Mediator and other nonparticipants specifically agreed to by the Parties and the Mediator may participate in the mediation. There shall be no stenographic, video, audio, or other electronic recording made of any part of the mediation. The Mediator may not make a report, assessment, evaluation, recommendation, finding or other communication regarding the mediation to a court, agency, arbitrator or other authority that may make a

ruling on the Dispute other than as required by court order or rules. The Parties and Representatives shall not state that they had participated in mediation in any later litigation on the dispute that is the subject of the mediation. Notwithstanding the foregoing, BMN and the Mediator may disclose information required by court order or rules after notice to all Parties. BMN may use general information about the mediation that does not identify the Parties or Representatives or the terms of settlement in statistical, marketing or information summaries that may include the nature of the dispute, the amount in controversy and whether the dispute was settled.

5. Fees, Expenses.

5.1 Fees, Expenses. All BMN and Mediator fees and expenses shall be the joint responsibility of the Parties and shall be divided equally among the Parties unless otherwise agreed. The published rates for the BMN Submission Fee and Mediator Fees for two-party mediations are found at www.BusinessMediationNetwork.com. Mediator Fees for mediations involving more than two parties will be as agreed upon by BMN and the Parties prior to the start of the Mediation. The Parties shall pay all fees to BMN and BMN shall be responsible for paying the Mediator. The Parties are responsible for providing a suitable place to conduct the Mediation and any expenses or third-party fees for the use of Mediation Conference facilities, telephone and video conference services shall be the joint responsibility of the Parties.

5.2 Submission Fee. Unless otherwise agreed by BMN, Parties shall pay BMN the published rate for the dispute Submission Fee, which shall be considered payment for any initial consultation, conflict check, the selection and scheduling of the Mediator and Mediation Conference and all administrative functions of BMN. The Submission Fee shall be deemed earned by BMN upon BMN's receipt and acceptance of the Notice of Mediation and is not refundable.

5.3 Mediator Fees. In addition to the Submission Fee, where a BMN Mediator is appointed, the Parties shall pay BMN the current published BMN Mediator Fees for two-party mediations or such other Mediator Fee as agreed to by the parties and BMN. For two-party mediations, the BMN Mediator Fees shall be the lower of the published Hourly Rate and the published Maximum Daily Rate for each day of the Mediation Conference. The BMN Mediator's participation in the Scheduling conference, review of documents and preparation for the Mediation Conference shall be included in calculating the Mediator Fees for the first day of the Mediation Conference. Upon request, BMN shall supply the Parties with a statement showing by date the amount of time spent on the Mediation by the BMN Mediator. The Parties and Representatives agree to limit the Documents and Background information submitted to the Mediator to 20 pages each for each day of the Mediation Conference and agree that BMN shall be paid for reasonable additional charges at the Hourly Rate if substantial additional documents are submitted for Mediator review. If the Mediation Conference extends beyond one (1) day, the Parties agree to pay BMN the amount of the fees for the first day prorated for such additional time. If the Parties choose Adjournment at the close of the Mediation Conference, the parties shall pay BMN Mediator Fees at the Hourly Rate for any continued Mediator involvement after Adjournment until

Termination. If the Mediator is required to travel more than fifty (50) miles from the Metropolitan Area shown on the Mediator Roster, Mediator shall receive the amount shown as “Travel Time” in the published Mediator Fees for time spent traveling to and from the location of the Mediation Conference.

5.4 Fees for Additional Services. Any Party or Representative that (i) requires BMN or the BMN Mediator to expend additional time and services due to their failure to comply with these Rules, (ii) directly or indirectly causes BMN or the BMN Mediator to become involved in any capacity in any litigation or future proceeding related to this Mediation or (iii) requests or causes BMN or the BMN Mediator to devote otherwise uncompensated time on matters relating to the Mediation prior to or after Termination shall pay to BMN the fees for the first day prorated for such additional BMN or BMN Mediator time.

5.5 Expenses. The Parties agree to reimburse BMN for the BMN Mediator’s reasonable out-of-pocket expenses for any approved travel and subsistence outside the Mediator’s published metropolitan area or for hospitality services provided by BMN or the Mediator at the Mediation Conference or other expenses incurred by BMN or BMN Mediator at the request of the Parties.

5.6 Payments.

5.6.1 Submission Fee. Unless otherwise agreed, the Party submitting the dispute to BMN shall tender the published Submission Fee in full along with the Notice of Mediation. BMN shall then invoice the all other Parties for a pro rata share of the Submission Fee and, upon receipt, shall issue a credit or refund to the submitting Party.

5.6.2 Mediator Fees - Deposit. As a deposit for the BMN Mediator Fees, the Parties shall pay BMN as follows:

5.6.2.1 Disputes Involving Less than \$50,000 – an amount equal to one-half day of Mediator Fees at the Daily Maximum Rate.

5.6.2.2 Disputes Involving more than \$50,000 – an amount equal to one day of Mediator Fees at the Daily Maximum Rate.

5.6.2.3 Expedited Mediation Conference – an amount equal to the Expedited Mediation Conference (“EMC”) fee announced by BMN in establishing the EMC program.

The BMN Mediator Fees Deposit shall be paid to BMN within five (5) days of the Notice but not later than three (3) days prior to the Mediation Conference. If any Party has not paid its portion of the Submission Fee or BMN Mediator Fees Deposit three (3) days prior to the commencement of the Mediation Conference, then BMN may deem that Party to have withdrawn from the Mediation and may notify the other Parties.

5.6.3 Additional Billing. In the event the BMN Mediator Fees exceed the Deposit, the Parties shall pay BMN the balance of the Mediator Fees and any Expenses within fifteen (15) days after Adjournment or Termination after which time interest shall accrue on the unpaid balance at the rate of one-percent (1%) per month until paid.

5.1.4 Cancellation. In the event the Mediation is terminated, cancelled or settled prior to the commencement of the Mediation Conference, BMN shall be paid BMN Mediator Fees at the Hourly Rate not to exceed the Maximum Daily Rate for any Mediator time spent on the Mediation until BMN is notified of the cancellation.

5.1.5 Refund. Within fifteen (15) days of Termination, BMN shall refund to the Parties any portion of the Mediator Fees Deposit that exceeds Mediator Fees actually earned.

6. Miscellaneous.

6.1 Indemnification. The Parties shall defend and indemnify BMN and Mediator from any demands, claims, disputes, causes of actions, judgments and expenses, including attorney's fees and costs, brought against or incurred by BMN or Mediator which arise from or relate in any way to the Mediation including the requests for information regarding the Mediation from third-parties.

6.2 BMN Promotional Programs. The Parties acknowledge that BMN and affiliates have various agreements, mediation programs, referral and promotional arrangements with associations, organizations, institutions, attorneys and advisors who may be associated, directly or indirectly, with one or more Parties or Representatives ("Promotional Programs"). These Promotional Programs are designed to promote and encourage the use of mediation generally, the selection of the Mediators on BMN's Mediator Roster and the education and availability of attorneys and advisors and may involve the payment or receipt of promotional fees by BMN. The Parties agree that the Promotional Programs do not affect the impartiality of the individual Mediator.

6.3 Limitation of Claims Involving BMN, Mediator. Neither BMN nor Mediator shall be liable to any Party or Representative for any claims, costs, damages, liabilities or other injury suffered by Parties related to the Mediation, the Mediation Process or the application of these Rules. Any liability of BMN or the Mediator to any Party or Representative shall be limited to the refund of the Submission Fee and Mediator Fees paid to BMN by the claiming party.

6.4 Mediation / Arbitration. In the event of any claim or dispute or claim by any Party or Representative under these Rules that directly or indirectly involves BMN or the Mediator as a party, including the failure of any Party to pay BMN's Fees or Expenses, the parties to such dispute agree to participate in one mediation conference with a neutral mediator chosen by reasonable agreement of the parties under mutually agreeable circumstances within twenty one (21) days of the receipt of a notice to mediate. The parties to such mediation agree to follow these Rules and to equally divide the fees of such

mediation and to pay their own attorney's fees and expenses. Any party to such dispute who fails to attend such mediation conference shall pay the reasonable attorneys' fees and costs (not to exceed \$5,000) incurred by the other party or parties in initiating arbitration. If no agreement is reached following such mediation conference, or if a party refuses to participate in such mediation conference, the parties agree to binding arbitration before a single arbitrator, reasonably acceptable to all parties, under the rules of a national arbitration administrator conducted in DuPage County, Illinois. The arbitrator shall not join other parties or interpret this provision as allowing arbitration of any class action. Any arbitration award shall include an award of reasonable attorney's fees and expenses relating to the arbitration to the successful party or parties.

Business Mediation Network, LLC

Toll Free: 855-778-MEDIATE (6334)
info@BusinessMediationNetwork.com
www.BusinessMediationNetwork.com