

MEDIATION RULES, PROCEDURES & PROTOCOL OF DISPUTE PREVENTION & RESOLUTION, INC.

in effect July 1, 1995 © 1998

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I. Agreement of Parties to Submit Matters to Confidential Mediation/Conciliation/Facilitation

In any matter in which the parties, by previous contractual agreement or by direct submission, have provided for mediation, neutral facilitation, conciliation or other third party settlement procedures pursuant to the Dispute Prevention & Resolution (DPR) Rules, Procedures and Protocols for Mediation, they shall be bound by these Mediation Rules, Procedures & Protocols. These Rules, Procedures & Protocols shall constitute a portion of the parties' overall agreement to participate in third party settlement procedures under the auspices of DPR.

II. Initiation & Commencement of Mediation

The parties to an existing dispute or controversy may initiate a mediation proceeding by:

(a) submitting a fully executed Submission to ADR form to DPR which includes the names, addresses, telephone numbers of all parties and counsel involved in the dispute or controversy and which describes the nature of the dispute and the remedy(s), relief sought; or (b) submitting a letter agreement or written stipulation to DPR which contains all of the above-referenced information. If no previous agreement to submit a matter to mediation exists, a party or parties may request that DPR invite the voluntary participation in a mediation/facilitation/conciliation proceeding of the other party(s). As a neutral ADR administrator, DPR will contact all relevant parties to educate them about the mediation process and seek their voluntary participation. DPR may also convene a meeting of the parties in order to provide a forum for the exploration of applicable procedures and the creation of an appropriate submission agreement.

III. Selection & Appointment of Mediator

Because selection and appointment of a qualified and objective neutral is vital to the effectiveness of any ADR proceeding, DPR provides parties with a variety of selection/appointment options: (a) parties may stipulate to the appointment of any member of DPR's Distinguished Panel of Neutrals, or (b) parties may consider all of the names on DPR's Distinguished Panel of Neutrals and select a neutral by way of the preference method (striking unacceptable names and rank ordering acceptable names) or the alternative strike-off procedure (alternately striking names until a single name remains), or (c) if the mediation agreement provides for the selection of a particular neutral or a specific selection methodology, that protocol shall be followed, or (d) the parties may stipulate that DPR appoint the neutral from among its Distinguished Panel of Neutrals.

IV. Protocol and Criteria for Service of DPR Mediator

Any person designated to serve as a neutral Mediator, Facilitator or Conciliator under these Rules, Procedures and Protocols shall do so in strict compliance with "Resolution Endorsing the Guidelines for Hawaii'i Mediators" dated July 11, 2002. Any person designated to serve as a third party neutral under these procedures shall disclose in writing to DPR (and through DPR to the parties) any circumstances, relationships or conditions which could create the impression or presumption of partiality or bias. DPR shall immediately solicit the parties' comments on any written disclosure and, if the parties agree, replace the neutral and appoint another qualified neutral. If the parties do not agree that a substitute neutral should be appointed, DPR shall review the matter and issue a binding determination. Any person appointed to serve as a third party neutral under these Rules, Procedures and Protocols who has a social or personal relationship with a party or counsel or any other interest in the proceeding may serve only with the written consent of all parties.

If any third party neutral appointed pursuant to these Rules, Procedures and Protocols shall for any reason be unwilling or unable to fully carry out the responsibilities and duties of the office for which he/she was appointed, DPR shall declare the office vacant and proceed to appoint another neutral.

V. Notice of Mediation Proceedings

The appointed neutral(s) shall establish the schedule for the initial and all subsequent mediation sessions. To the greatest extent possible, DPR will provide the parties and the neutral with written notice of all mediation proceedings. The parties may conduct the mediation in the offices of DPR (1003 Bishop Street, Pauahi Tower Suite 1155, Honolulu, Hawaii), the offices of the duly-appointed neutral, or at any other location which is agreeable to the parties. If the parties are unable to agree on a venue or location, DPR and the neutral will determine an appropriate venue and location.

VI. Submission of Documents and Other Materials

The appointed neutral may request that each party submit a confidential pre-mediation statement or memorandum which sets forth (a) the legal and factual issues, (b) the claims and defenses, (c) the most recent settlement demands and offers, if any, (d) settlement positions, if any, and (e) the present status of any related proceeding(s).

During the course of the mediation process, the Mediator may request that the parties provide additional information in order to insure that all of the issues and the interests and positions of the parties are clearly understood.

VII. The Duties and Obligations of the Mediator

Mediators do not have the authority to issue decisions, enforce discovery, or impose conditions or settlement terms on the parties. The primary function of the Mediator is to help the parties reach a mutually acceptable resolution of their dispute. In order to accomplish this objective, Mediators may conduct joint sessions and private caucuses with some or all of the parties. Mediators may also make recommendations to the parties about possible settlement terms; however, the Mediator's recommendations are advisory in nature and are not binding upon the parties.

Mediators have the authority to (a) establish the mediation schedule, (b) require a recess in the proceedings, (c) request the parties' permission and consent to obtain technical or procedural expertise as the case may warrant, (d) request that parties impose a "no communications" rule (e.g. a "gag order") on an ongoing mediation matter and (e) declare an impasse, if in the estimation of the Mediator, further mediation proceedings are not likely to lead to or enhance the likelihood that a resolution of the controversy can be reached.

VIII. Privacy and Confidentiality

The process of mediation is by its nature a private proceeding. DPR and the neutral(s) appointed by DPR are obligated at all times to maintain the privacy of (a) the nature of and parties to a dispute, (b) the status of any ongoing ADR proceedings, and (c) the terms of settlement, if any, that were or may be reached in the mediation.

Persons having a direct interest in the mediation proceeding may attend joint and private mediation sessions (only those private sessions that are specifically designated by the Mediator). Any other person or persons who wish to attend and/or participate in the mediation proceeding may do so only with the express permission of all of the other parties and with the authorization of the Mediator.

Mediation proceedings are governed, in part, by Rule 408 of the Hawaii Evidence Code. This rule acknowledges the inadmissibility of compromises and offers of compromise in any subsequent administrative, arbitral or judicial forum. Any confidential information that is disclosed by the parties or their witnesses to the Mediator during the course of a mediation proceeding shall be held in confidence by the Mediator. Any and all records, reports, exhibits, memoranda or other documents which are submitted to the Mediator in confidence (for purposes of the mediation) shall be held in confidence by the Mediator. No Mediator serving under these Rules, Procedures, and Protocol shall be compelled to produce his or her notes of the proceeding or any other records or documents which were submitted to the Mediator during the course of the mediation proceeding. Mediators serving under these Rules, Procedures, and Protocols shall not be compelled to testify as to any matters or issues relating to the mediation and may not voluntarily agree to testify in any proceeding which arises from or relates to the mediation proceeding or the parties thereto.

IX. Record of the Mediation Proceeding

Because the mediation process is private and confidential no record of the proceeding may be made by or on behalf of any participant (i.e. stenographic, tape recording, video recording, etc.).

X. Closure of the Mediation Proceeding

The parties and/or the Mediator may close the mediation proceedings as follows: (a) the parties agree to the terms of and sign a binding and enforceable settlement agreement, or (b) the parties enter into and the appointed neutral signs a Stipulated Award of Arbitrator, or (c) the Mediator declares that an impasse exists, or (d) one or more of the parties withdraws from the mediation proceeding and the remaining parties elect not to proceed, or (e) one or more of the parties is stayed from proceeding in mediation by an order from an appropriate court, and the remaining parties elect not to proceed.

XI. Exemption from Liability

Neither Dispute Prevention & Resolution, Inc. nor the DPR appointed neutral are necessary parties to any arbitral, judicial or administrative proceeding which arises from or relates to the mediation proceeding or the parties thereto. By agreeing to these Rules, Procedures and Protocols, the parties acknowledge that neither DPR nor the DPR appointed neutral is or shall be liable for any act or omission that occurs in relation to the administration and/or conduct of the mediation proceeding under these Rules, Procedures and Protocols.

XII. Fees, Expenses, Deposits & Refunds

DPR and the DPR appointed neutral will charge a single negotiated hourly or daily fee on each case. In order to assure the highest degree of objectivity and independence, DPR will negotiate and administer all arrangements for compensation between the parties and the DPR Neutral. The DPR/neutral hourly or daily fee covers the compensation of the neutral as well as all other costs normally associated with the administration and conduct of an ADR proceeding (e.g. hearing room charges, case administration expenses, phone and fax charges, etc.) Out-pocket-expenses incurred by the DPR neutral in the course of the mediation proceeding (e.g. transportation, lodging, meals, etc.) will be borne equally by the parties unless all parties agree to a different allocation.

DPR/Neutral will assess the Hawaii General Excise Tax.

DPR will require each party to submit in advance of the proceeding a deposit for the anticipated DPR/neutral fees and expenses. All funds deposited with DPR are held in trust. DPR is responsible for issuing payment(s) to the neutral(s) and any refunds which may due to the parties at the conclusion of the case.

DPR and the appointed neutral reserve the right to suspend services at any time due to insufficient deposits or non-payment.

Please contact DPR at (808) 523-1234 with any questions or to obtain additional information about our services.

Dispute Prevention & Resolution, Inc.

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