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## **Mediation rules**

The "bMediation" ASBL (hereafter "the Centre") has the purpose to promote the use of mediation to resolve economic disputes and to organize a framework allowing for a mediation process to take place in adequate conditions.

In this context, the Centre has adopted this set of rules which summarizes the necessary information for parties willing to settle their dispute through the use of mediation, within the framework of a legal procedure or not.

Any mediation organized by the Centre must comply with the provisions of this set of rules.

### **Chapter I MEDIATION REQUEST**

#### **Article 1**

The Centre may be contacted by one party or by several parties using the mediation request form. This form is available on the website [www.bmediation.eu](http://www.bmediation.eu) or at the Centre's administrative office.

When the Centre is contacted by one party only, following the payment of mediation fees to the Centre according to the applicable rate, the Centre may contact the party or other parties involved, inform them about the mediation process and attempt to seek their agreement in principle regarding mediation.

#### **Article 2**

In the event of a joint request by the parties or in the event of an agreement of all parties to participate in mediation, the administrative office of the Centre shall invoice each of the parties for administrative costs of the mediation and for a portion of the fees and expenses of the bMediator, based on the information contained in the mediation form. In

principle, the amount is divided accordingly between each of the parties, unless agreed otherwise by the parties.

Invoices are payable in cash and at the latest before the mediation preparatory meeting.

## **Chapter II**

### **CHOICE OF MEDIATOR(S)**

#### Article 3

The Centre has a list of approved mediators known as certified bMediators. The approval of the bMediators meets higher quality standards designed to guarantee that the parties benefit from high standard mediation, in order to seek and reach an agreement in the best possible conditions.

If, given the circumstances, a non-approved mediator is called upon, the Centre shall seek the agreement of the parties before selecting the proposed mediator.

#### Article 4

When appointed on the basis of a designation request, the Centre shall submit to the parties the names of three bMediators chosen according to the nature of the dispute, as described in the mediation request form, unless the parties previously agreed on the name of the mediator(s).

The Centre shall contact the proposed bMediators beforehand in order to ensure that no legal or ethical impediment prevents them from completing their assignment.

The parties shall jointly select the bMediators who will be entrusted with the mediation assignment. In principle, they shall agree on the name of a single bMediator. However, subject to their agreement and a review of the advance on fees, they will be allowed to select several bMediators.

If the parties fail to agree on the bMediator within a period of 15 days after the names were communicated by the Centre, the Centre shall appoint the bMediator of its own initiative, if the parties have not agreed on another name.

The *intuitu personae* nature is the essence of the mission of the bMediator.

### **Chapter III**

#### **MEDIATION PROTOCOL**

##### Article 5

The administrative office shall inform the bMediator of his appointment by the parties and shall provide him with:

- a copy of the mediation request form;
- a confirmation of the advance payment on the fees;
- a copy of the mediation protocol to be filled in

The bMediator shall accept his assignment and sign an impartiality statement which shall be communicated to the parties and to the administrative office of the Centre.

##### Article 6

Within 48 hours of accepting the assignment, the bMediator shall contact each party and/or its counsel(s) to arrange mediation and the signing of the mediation protocol.

The mediation protocol contains all the rules of the mediation procedure as organized by the Centre.

At the beginning of the mediation, the bMediator shall inform and/or remind the parties and their legal and technical advisors of the procedure rules and shall seek their full and complete agreement.

The signing of the mediation protocol is mandatory. Failing this, the mediation shall not be initiated.

The protocol is drawn up in as many copies as parties plus two copies (one for the bMediator(s), and the other for the administrative office of the Centre).

### **Chapter IV**

#### **EXECUTION OF THE ASSIGNMENT**

##### Article 7

The bMediator shall carry out his assignment impartially and in accordance with the ethic rules of the Centre. He benefits from complete freedom in the exercise of his mission and organizes it as he sees fit and efficient.

He is not required to observe the principle of Audi alteram partem.

He shall, at all times, act with a complete and perfect impartiality, without any bias.

Every bMediator is strictly held to an obligation of secrecy regarding the facts which will be brought to his knowledge as a bMediator.

#### Article 8

The parties may be assisted by a counsel of their choice, or by any advisor that the bMediator considers acceptable and able to contribute to a negotiated solution to the dispute in question.

The bMediator shall always have the power to refuse pursuing a mediation assignment if a party is represented by a person who cannot act on behalf of the party, or if that party is assisted by a person that the bMediator sees as impairing the adequate conduct of the mediation.

#### Article 9

The bMediator brings together the parties, sits with them or talks with them, separately if he considers it appropriate, and strives to initiate a discussion between them in order to create a dialogue, and to encourage each of them to formulate proposals potentially leading to an agreement.

At the request of the parties and if he considers it appropriate, while showing restraint, the bMediator can also make suggestions or proposals for an amicable solution.

#### Article 10

The bMediator shall keep the administrative office of the Centre informed of the execution of his assignment. No confidential information may be disclosed. The only information given shall concern the status of the mediation procedure and its potential future success.

The bMediator is required to send the administrative office of the Centre a first report of his assignment no later than 15 days following the signing of the mediation protocol.

The bMediator shall maintain a record of services performed in the form of a time sheet. This record shall be communicated to the administrative office of the Centre prior to any further request for an advance on fees. This record of services shall also serve as a basis for the report of the bMediator at the end of his assignment.

## **Chapter V**

### **CONFIDENTIALITY OF MEDIATION**

#### **Article 11**

Mediation is confidential in nature, and anyone participating shall observe its confidential nature.

If an observer is to be involved in the mediation, he is required to sign a confidentiality agreement beforehand.

#### **Article 12**

Unless expressly agreed by parties, the bMediator is prohibited from performing the functions of arbitrator, representative or counsel of a party in a judicial proceeding or arbitration relating to the dispute which has been the subject of the mediation procedure.

Parties shall not include the bMediator as a witness in such a procedure.

#### **Article 13**

The parties waive the use of the following elements as evidence in any arbitration, administrative or judicial proceeding, or otherwise, whatever its nature:

- a) opinions expressed or suggestions made by other parties or by the bMediator regarding a possible solution to the dispute;
- b) the proposals, summaries, notes, etc. submitted by the parties or by the bMediator;
- c) the fact that one of the parties has indicated that it is prepared to accept a proposal of agreement as presented by the bMediator;
- d) all documents drawn up in the context of the mediation.

They deny any probative value to the above mentioned elements.

## **Chapter VI**

### **INCIDENTS, CONSERVATORY MEASURES AND VARIANTS OF MEDIATION**

#### Article 14

The bMediator shall ensure the adequate conduct of the mediation and shall ensure at all times that the mediation rules are observed by the parties and by himself. He can suspend the mediation for a period of time as deemed necessary, in order to restore conditions of respect and serenity which are necessary for the adequate conduct of the process.

However, the bMediator cannot be held responsible for the direct and indirect consequences of the remarks, facts and actions of the parties. The mediation process involves that parties frankly address conflicting issues, which can be a source of tensions.

#### Article 15

The use of mediation does not prevent a party from taking provisional or protective measures as it deems necessary.

#### Article 16

Subject to the agreement of the parties, the bMediator may call upon a technical expert in the area which is the subject of the dispute, whether for a technical or legal matter.

Subject to the prior agreement of the parties, the expert's opinion may be of indicative value or, on the contrary, may bind the parties. It can consist in a neutral evaluation of all or part of the dispute. The cost of the expert's intervention is paid by the parties.

#### Article 17

At any stage of the mediation, the parties may decide to entrust a third party with the responsibility to settle their dispute definitively and irrevocably. In this case, the bMediator shall inform without delay the administrative office of the Centre which, unless otherwise agreed by the parties, shall contact the third party in question, shall seek its agreement on the subject of the assignment and shall set the terms, time limits and costs of its intervention.

Prior to this, assisted by their counsels and the bMediator, parties shall establish in writing the elements submitted to the decision of the third party, and shall ensure that the decision of the third party is likely to permanently settle the dispute. The document

shall be drawn up in the form of a transaction agreement and shall identify the debtors of mediation charges and fees and, where appropriate, the distribution of these charges and fees.

The third party shall inform the administrative office of the Centre of its decision within the specified period of time. The administrative office of the Centre shall inform the parties that a decision has been taken, therefore putting an end to the mediation.

The administrative office shall prepare a final statement of costs and fees for the mediation and shall send it to the parties along with the decision of the third party, according to the terms agreed on in the transaction agreement.

#### Article 18

Parties may also decide to appoint a third party entrusted with the responsibility of settling their dispute permanently and irrevocably by making an impartial decision between the final offers made during mediation.

This variant of the mediation procedure can only be initiated once the parties analyze the different options for the resolution of their dispute with the bMediator.

In this case, the bMediator shall inform without delay the administrative office of the Centre which, unless otherwise agreed by the parties, shall contact the third party in question, shall seek its agreement on the subject of the assignment and shall set the terms, time limits and costs of its intervention.

Prior to this, with the assistance of their counsels and of the bMediator, parties shall establish in writing the offers made by each of the parties and ensure that their acceptance or decision is likely to permanently settle the dispute. The document shall be drawn up in the form of a transaction agreement and shall identify the debtors of mediation charges and fees and, where appropriate, the distribution of these charges and fees.

The third party shall inform the administrative office of the Centre of its decision within the specified period of time. The administrative office of the Centre shall inform the parties that a decision has been made, therefore putting an end to the mediation.

The administrative office shall prepare a final statement of costs and fees for the mediation and shall send it to the parties along with the decision of the third party, according to the terms agreed on in the transaction agreement.

## **Chapter VII**

### **END OF MEDIATION**

#### Article 19

Except as provided in articles 17 and 18 and depending on circumstances, the assignment of the bMediator shall end as follows:

- a) with the signing of an agreement between the parties;
- b) with the drafting by the bMediator of a statement noting the failure of the mediation attempt. This statement shall not be reasoned;
- c) with one or all parties notifying the bMediator of their decision not to pursue the mediation process, at any stage of the mediation attempt;
- d) with the decision of the bMediator to end the mediation process, if he deems it justified;
- e) when the bMediator, one of the parties or the Centre believe that mediation can no longer continue with the serenity and impartiality required.

The bMediator shall inform the administrative office of the Centre of the end of his assignment and indicate whether or not an agreement was reached.

#### Article 20

At the end of his mission, the bMediator shall establish the final statement of fees, costs and outlays relating to mediation. This statement shall be delivered without delay to the administrative office of the Centre, which shall issue the final invoice to the attention of the parties.

The fees, costs and outlays mentioned above shall be borne equally by the parties, unless the agreement reached provides for a different apportionment.

All other expenses incurred by a party are the responsibility of that party.