

INTERNATIONAL

# International

## Mediation Procedures and Costs



AMERICAN ARBITRATION ASSOCIATION®

Available online at [icdr.org](https://www.icdr.org)

Procedures Amended and Effective March 1, 2021

Costs Amended and Effective June 1, 2023

Table of Contents

International Mediation Procedures and Costs .....3

M-1. Agreement of the Parties.....3

M-2. Initiation of Mediation.....3

M-3. Representation.....3

M-4. Appointment of the Mediator.....4

M-5. Mediator’s Impartiality and Duty to Disclose.....4

M-6. Vacancies.....4

M-7. Language.....4

M-8. Duties and Responsibilities of the Mediator.....5

M-9. Mediation Proceedings.....5

M-10. Responsibilities of the Parties.....5

M-11. Privacy Mediation conferences and related mediation communications are private proceedings.....6

M-12. Confidentiality.....6

M-13. No Stenographic Record.....6

M-14. Termination of Mediation.....6

M-15. Exclusion of Liability Neither the ICDR nor any mediator is a necessary party in judicial proceedings relating to the mediation.....7

M-16. Interpretation and Application of Rules.....7

M-17. Deposits .....7

M-18. Expenses.....7

M-19. Costs of Mediation.....7

# International Mediation Procedures and Costs



## M-1. Agreement of Parties

Whenever parties have agreed in writing to mediate disputes under these International Mediation Rules, or have provided for mediation or conciliation of existing or future international disputes under the auspices of either the International Centre for Dispute Resolution® (“ICDR®”), the international division of the American Arbitration Association® (“AAA®”), or the AAA without designating particular rules, they shall be deemed to have made these International Mediation Rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement. The parties by mutual agreement may vary any part of these Rules including, but not limited to, agreeing to conduct all or part of the mediation via video, audio, or other electronic means.

## M-2. Initiation of Mediation

1. Any party or parties to a dispute may initiate mediation under the ICDR’s auspices by filing a request for mediation to any of the ICDR’s regional offices or case management centers via email, mail, courier, or fax. Requests for mediation may also be filed online through the ICDR’s AAA WebFile® at [www.icdr.org](http://www.icdr.org) or via email at [casefiling@adr.org](mailto:casefiling@adr.org).
2. The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the ICDR and the other party or parties as applicable:
  - a. the names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation;
  - b. a copy of the mediation provision of the parties’ contract or the parties’ stipulation to mediate;
  - c. a brief statement of the nature of the dispute and the relief requested; and
  - d. any recommendations for a specific mediator or qualifications the mediator should possess.
3. Where there is no pre-existing stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the ICDR, a party may request the ICDR to invite another party to participate in “mediation by voluntary submission.” Upon receipt of such a request, the ICDR will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

## M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party’s choice. The names and addresses of such persons shall be communicated in writing to all parties and to the ICDR.

#### M-4. Appointment of the Mediator

The ICDR shall assist the parties in finding a mutually agreeable mediator. If the parties are not able to agree on the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- a. Upon receipt of a request for mediation, the ICDR will send to each party a list of mediators from the ICDR's Panel of Mediators. The parties are encouraged to agree on a mediator from the submitted list and to advise the ICDR of their agreement.
- b. If the parties are unable to agree on a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the ICDR. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. The ICDR shall appoint a mutually acceptable mediator from the list, based upon the parties' designated preferences.
- c. If for any reason the appointment cannot be made from the submitted list, the ICDR shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

#### M-5. Mediator's Impartiality and Duty to Disclose

1. ICDR mediators are required to abide by the Model Standards of Conduct for Mediators in effect at the time a mediator is appointed to a case. Where there is a conflict between the Model Standards and any provision of these Mediation Rules, these Mediation Rules shall govern. The Model Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.
2. Prior to accepting an appointment, ICDR mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. ICDR mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time frame desired by the parties. Upon receipt of such disclosures, the ICDR shall immediately communicate the disclosures to the parties for their comments.
3. The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

#### M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the ICDR will appoint another mediator, unless the parties agree otherwise, in accordance with Rule M-4.

#### M-7. Language

If the parties have not agreed otherwise, the language of the mediation shall be that of the documents containing the mediation agreement.

## M-8. Duties and Responsibilities of the Mediator

1. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
2. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute.
3. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

## M-9. Mediation Proceedings

1. The mediator shall conduct the proceedings with a view to expediting the resolution of the dispute. The mediator may conduct a preparatory conference with the parties promptly after being appointed for the purpose of organizing the proceedings of the case. In establishing procedures for the case, the mediator and the parties may conduct all or part of the mediation via video, audio, or other electronic means to increase the efficiency and economy of the proceedings.
2. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
3. The mediator may conduct separate or ex parte meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted in person, in writing, via video, audio or other electronic means.
4. The mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
5. In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties for a period of time in an ongoing effort to facilitate a complete settlement.
6. Early in the proceeding or at the preparatory conference, the mediator and the parties shall consider cybersecurity, privacy, and data protection to provide for an appropriate level of security and compliance in connection with the proceeding.

## M-10. Responsibilities of the Parties

1. The parties shall ensure that appropriate representatives of each party, having authority to commit to the execution of a settlement agreement, attend the mediation conference.
2. Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

#### M-11. Privacy Mediation conferences and related mediation communications are private proceedings.

The parties and their representatives may attend mediation conferences. Other persons may attend only with the permission of the parties and with the consent of the mediator.

#### M-12. Confidentiality

1. Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.
2. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.
3. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:
  - a. views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
  - b. admissions made by a party or other participant in the course of the mediation proceedings;
  - c. proposals made or views expressed by the mediator; or
  - d. the fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

#### M-13. No Stenographic Record

1. There shall be no stenographic record of the mediation process.

#### M-14. Termination of Mediation

The mediation shall be terminated:

- a. By the execution of a settlement agreement by the parties; or
- b. By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- c. By a written or verbal declaration of any party to the effect that the mediation proceedings are terminated; or
- d. When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference; or

- e. The parties may request the mediator (by signing the settlement agreement or otherwise) or the ICDR to issue an attestation that a settlement was reached in the course of a mediation to assist in the enforcement of such settlement agreement under the United Nations Convention on International Settlement Agreements Resulting from Mediation or other applicable law.

#### M-15. Exclusion of Liability Neither the ICDR nor any mediator is a necessary party in judicial proceedings relating to the mediation.

Neither the ICDR nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these Rules.

#### M-16. Interpretation and Application of Rules

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by the ICDR.

#### M-17. Deposits

Deposits Unless otherwise directed by the mediator, the ICDR will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation, and the ICDR shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

#### M-18. Expenses

All expenses of the mediation, including required travel and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

#### M-19. Costs of Mediation

A \$250 non-refundable deposit, which will be applied toward the mediation fee, is required to initiate the ICDR's administration of the mediation and appointment of the mediator.

The mediator's fee is stated on his or her resume. The ICDR/AAA administrative fee, split by the parties, is \$75 per hour billed by the mediator with a minimum four-hour charge for any mediation held. Expenses referenced in Section M-18 of the Mediation Procedures may also apply.

If a matter submitted for mediation is withdrawn or cancelled or results in a settlement after the request to initiate mediation is filed but prior to the mediation conference, the ICDR/AAA administrative fee is \$250 (to which the deposit will be applied) plus any mediator time and expenses incurred. These costs shall be borne by the initiating party unless the parties agree otherwise.