

## **MEDIATION RULES**

(Effective May 15, 2017)

### **INTRODUCTION**

#### **1. Mediation Rules**

These Rules shall apply to any dispute, controversy or claim referred to voluntary mediation, whether *ad hoc* or institutional, under these Rules.

#### **2. Statement of Policy**

The Philippine Dispute Resolution Center, Inc. (PDRCI) recognizes and supports party autonomy or the freedom of the parties to make their own arrangements to resolve their disputes. It actively promotes the use of alternative dispute resolution (ADR) as an important means to achieve the speedy and impartial resolution of disputes and to de-clog court dockets.

#### **3. Model Mediation Clause**

"The parties shall resolve any dispute, controversy or claim under this contract by mediation pursuant to the Mediation Rules of the Philippine Dispute Resolution Center, Inc. (PDRCI). If there is no settlement within 60 calendar days from commencement of the mediation, or such other period agreed in writing by the parties, the dispute shall be finally resolved by arbitration under the PDRCI Arbitration Rules then in force."

#### **4. Mediation**

Mediation under these Rules is a voluntary, confidential and non-binding private dispute resolution process in which a mediator, who shall be a neutral person selected by the disputing parties or appointed under these Rules, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute.

#### **5. Application of Rules**

The agreement to submit a dispute, controversy or claim to mediation under PDRCI includes an agreement to be bound by these Rules and the administrative policies and guidelines of PDRCI now or hereafter issued.

## **MEDIATION PROCESS**

### **6. Initiation of the Mediation Process**

(a) Any party or parties to a dispute may initiate a mediation under these Rules by sending a written request for mediation to PDRCI and to the other party or parties, which shall include:

- i. a description of the dispute, including an assessment of its value, the names and contact details of the parties to the dispute, including lawyers, representatives and other persons providing assistance to the parties;
- ii. a reference to and a copy of the mediation clause or the mediation agreement; and
- iii. the name and contact details of the proposed mediator or the qualifications of the mediator.

(b) Upon receipt of the non-refundable filing fee of PhP75,000, PDRCI will notify the other party or parties and set a 10-day period for the other party to accept the request for mediation and confirm the appointment of a mediator.

(c) If there is an agreement between the parties to refer their dispute to mediation but such agreement does not provide for mediation at PDRCI or under these Rules, or there is no agreement by the parties to refer their dispute to mediation, the initiating party or parties may request PDRCI to invite the other party to agree to mediation under these Rules.

(d) If the other party does not reply to such request or invitation within the 10-day period, or if the other party rejects the invitation to mediate, PDRCI shall promptly inform the requesting party in writing and close the file.

### **7. Number and Appointment of Mediators**

(a) There shall be one mediator for a dispute. The parties, however, may agree to have a co-mediator.

The parties shall jointly nominate a mediator from the PDRCI's Panel of Mediators. Failing their agreement within 10 days from notice of the request to mediate, PDRCI may appoint such mediator.

(b) The parties may request PDRCI to recommend suitable individuals or entities to act as a mediator. In making its recommendation, PDRCI shall give regard to the qualifications desired by the parties and to other considerations likely to secure the appointment of a competent, independent and impartial mediator.

(c) Promptly after the parties have agreed to a mediator, PDRCI shall contact the mediator to confirm his/her availability and acceptance of the mediation. The mediator shall promptly submit a statement of acceptance and independence to PDRCI and the parties.

(d) The statement of acceptance and independence shall disclose any actual or potential conflict of interest or any circumstance likely to give rise to justifiable doubts as to the mediator's impartiality or independence, if any. If, despite such disclosure, the parties agree to accept the mediator, PDRCI shall confirm the appointment of the mediator, unless the circumstances shall give rise to justifiable doubts as to the integrity of the mediation process.

(e) When a person is approached for possible appointment as mediator, s/he shall immediately disclose any circumstance likely to give rise to justifiable doubts as to his/her impartiality or independence. A mediator, from the time of the appointment and throughout the mediation, shall without delay disclose any such circumstance to the parties.

(f) If the mediator nominated by the parties declines the appointment, PDRCI shall appoint the mediator.

(g) If a mediator withdraws, dies, or becomes absent, seriously ill, or incapacitated for more than 10 days during the mediation, the parties may appoint a replacement within 20 days of the withdrawal or notice of death, absence or serious illness or incapacity. If the parties are unable to agree on a replacement, PDRCI shall appoint a replacement mediator.

## **8. Fee and Deposit for Mediation Expenses**

(a) Upon acceptance by the mediator of the appointment, PDRCI shall issue an assessment for the full mediation fee and deposit for mediation expenses, which shall be paid by the parties in equal shares, unless one party requests that the fee and deposit for expenses shall be paid proportionately.

(b) The minimum mediation fee shall be PhP100,000 and the minimum deposit for mediation expenses shall be PhP50,000. The mediation fee and deposit for mediation expenses shall be adjusted by PDRCI based on the sums in dispute, the number of parties, complexity of the issues, number of meetings estimated or required, venue, and other similar circumstances.

(c) Promptly upon receipt in full of the mediation fee and deposit for mediation expenses, PDRCI shall transmit the case file to the mediator, who shall set the first mediation session. The mediator shall not act on the dispute until the mediation fee and deposit for mediation expenses are paid in full.

(d) The date of payment in full of the mediation fee and the deposit for mediation expenses shall be considered the date of commencement of the mediation.

## **9. Conduct of Mediation**

(a) At the first mediation session, the mediator shall explain the mediation process and the roles and responsibilities of the mediator, each party, and each representative, if

any, who will take part in the mediation. The parties shall sign an Agreement to Mediate under these Rules if they have not signed one prior to referring the dispute to PDRCI.

(b) The mediator may conduct the mediation in such a manner as he considers appropriate, taking into account the nature of the dispute, the circumstances and interests of the parties, and the benefit to the parties of settling the dispute within 90 days from commencement of the mediation.

(c) In the absence of agreement by the parties, the mediator may observe the following general procedure:

- i. Introduction of the parties, their representatives, and the mediator;
- ii. Introduction to the mediation procedure and the ground rules;
- iii. Opening statement of the parties;
- iv. Exchange of comments by the parties and clarification by the mediator;
- v. Facilitation and/or evaluation by the mediator;
- vi. Private caucuses with the parties and their representatives;
- vii. Clarification and resolution of issues;
- viii. Agreement on the terms of settlement;
- ix. Preparation of the settlement agreement; and
- x. Review and signing of the settlement agreement

(d) The ground rules may include an agreement on the time, place and frequency of meetings, communications between the parties and the mediator, conduct of the parties and the mediator, including minimum appropriate language and behavior, confidentiality of the process, adjournments, suspension of the proceeding, and termination of the mediation.

(e) During the first mediation session, but not earlier, the mediator may meet with or communicate separately with each of the parties in private. S/he may propose alternatives for the settlement of the dispute, but not the settlement itself.

(f) Upon the request of both parties, the mediator may make a non-binding evaluation of the proposals for settlement, but not on the merits of the parties' respective positions.

(g) Whenever necessary and provided the parties agree and assume the cost, the mediator may seek expert advice to facilitate the settlement or evaluate the proposals for settlement.

(h) At any stage of the mediation process, the mediator may request the parties to submit written statements or proposals for settlement and such additional information as may be appropriate to facilitate the settlement. The refusal to provide any written statement or proposals for settlement or information shall not be construed adversely against any party and shall not prejudice the right of the other party to withdraw any statement or information it may have submitted pursuant to the mediator's request.

(i) Unless the parties have agreed on the time and place of the mediation, it shall be determined by the mediator upon consultation with the parties.

## **10. Role of Mediator**

The mediator shall:

- (a) Assist the parties amicably settle their dispute upon their own terms. The mediator has no authority to impose a settlement on the parties or to comment on their respective claims, statements or positions.
- (b) Comply with the Code of Conduct for Mediators, any applicable law, and these Rules, and such administrative policies and guidelines of PDRCI, now or hereafter issued.
- (c) Be guided by principles of fairness, transparency, and mutual respect. The mediator shall remain independent and impartial throughout the mediation process.
- (d) Immediately disclose any actual or potential conflict of interest or any circumstance likely to give rise to justifiable doubts as to the mediator's impartiality or independence. This duty shall continue throughout the mediation process.
- (e) Withdraw from acting as an arbitrator or as a representative or counsel of a party in any dispute involving the subject of the mediation or from testifying as a witness in any such dispute.
- (f) Keep in confidence all information acquired or received by reason of the mediation.
- (g) Refrain from taking advantage of any confidential or proprietary information received by reason of the mediation.

## **11. Role of the Parties**

The parties shall cooperate with and support the mediator to enable the mediation process to proceed and be concluded within the time stipulated.

## **12. Confidentiality**

- (a) The mediation process is by nature confidential. PDRCI, the mediator and the parties shall keep confidential all matters relating to the mediation. Confidentiality extends to the settlement agreement and the record of the mediation, except where its disclosure by PDRCI is necessary for purposes of implementation or enforcement of the settlement agreement, or to comply with a lawful order. In any other case, a party shall not disclose the settlement agreement without the prior written consent of the other party or parties.
- (b) A mediator shall have no authority to disclose the settlement agreement under any circumstance.

(c) When the mediator receives information concerning the dispute from a party, s/he shall disclose the fact of such receipt and the substance of the information to the other party and give it an opportunity to comment. However, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.

(d) The following information created for purposes of mediation shall not be admissible in any form as evidence in any arbitral, judicial or administrative proceeding:

- i. an invitation by a party to mediate or a party's willingness or refusal to mediate;
- ii. a dispute, any information exchanged between the parties before a mediation commences, and any agreement to mediate;
- iii. a document prepared solely for purposes of a mediation;
- iv. views expressed or suggestions made by a party during a mediation;
- v. statements, proposals or admissions made by a party during a mediation;
- vi. opinions, statements or proposals for settlement made by the mediator;
- vii. the fact that a party indicated its willingness to accept a proposal for settlement made by the mediator; or
- viii. the fact that a party terminated the mediation.

(e) Notwithstanding Section (d) above, the information may be admitted in evidence, to the extent required,

- i. under the law,
  - a. for purposes of carrying out or enforcing a settlement agreement; or
  - b. for a mediator to respond to a claim of misconduct.

(f) Except for the limitations set out in Section (d), any information created for purposes other than a mediation does not become inadmissible because it was used in a mediation.

(g) Sections (d) and (e) apply whether or not the arbitral, judicial or administrative proceeding relates to a dispute that is or was the subject of a mediation.

### **13. Conflict of interest and Challenges**

(a) Unless the parties agree in writing, a mediator shall not act: (1) both as a mediator and an arbitrator; or (2) as an arbitrator after acting as the mediator, for the dispute that is the subject of the mediation or for another dispute that arises from the same contract or legal relationship or a related contract or legal relationship between the parties.

(b) A mediator selected by the parties or appointed by PDRCI shall immediately withdraw if challenged by a party upon any ground provided by law or these Rules. However, such withdrawal shall not imply acceptance by the mediator of the validity of any ground asserted in the challenge. A new mediator shall be appointed by PDRCI within

five (5) days from written notice of a request by a party or the withdrawal by the mediator.

#### **14. Mediator's Fee**

The mediator's fee, following the PDRCI's Schedule of Fees existing at the commencement of the arbitration, shall be paid as follows:

- 25% upon acceptance of the case record
- 25% upon conclusion of the last mediation session
- 50% upon signing of the settlement agreement

The mediator's fee shall be exclusive of taxes, if any.

#### **15. Termination of Mediation**

(a) The mediation is terminated by:

- i. the signing of the settlement agreement by the parties, their counsel, if any, and the mediator, on the date of the agreement;
- ii. a written declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;
- iii. a written declaration of the parties to the mediator to the effect that the mediation is terminated, on the date notice of such declaration is received by the mediator;
- iv. a written declaration of one party to the other party or parties and the mediator, to the effect that the mediation is terminated, on the date notice of such declaration is received by the other party and the mediator; or
- v. a lawful order terminating the mediation.

(b) Upon termination of the mediation, the mediator shall prepare a Mediator's Report for submission to PDRCI, which shall indicate the date of termination and the reason/s for termination as provided in Section (a) above.

#### **16. Enforceability of settlement agreement**

(a) An agreement of the parties settling a dispute is final and binding upon them, their successors and assigns. The settlement agreement shall be complied with in good faith without need of court action.

(b) The parties may agree in the settlement agreement that the mediator shall act as sole arbitrator of the dispute and shall treat the settlement agreement as an arbitral award, which shall be subject to enforcement under the ADR Act of 2004 or any other applicable law.

(c) The parties may deposit the settlement agreement with the proper court or office for purposes of enforcement, in which case it shall cease to be confidential.

### **17. Stay of Arbitral, Judicial or Administrative Proceedings**

(a) During the mediation, the parties shall not initiate any arbitral, judicial or administrative proceeding involving a dispute that is the subject of the mediation, except only when necessary to preserve the rights or interests of a party.

(b) If in the course of an arbitration, the parties decide to pursue mediation under these Rules, the arbitrator or the parties shall inform PDRCI of such decision.

(c) The dispute subject of the mediation shall be removed from arbitration effective upon the commencement of the mediation, without prejudice to the return of the dispute to arbitration in case mediation fails. The mediation shall not suspend the arbitration, unless the dispute subject of the arbitration is the same dispute involved in the mediation.

### **18. Exclusion of Liability**

The mediator shall not be liable for any claims related to the mediation, the failure of mediation, or any of the terms of the settlement agreement, unless s/he is found to have acted in bad faith.

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