

Pre-Trial Solutions Inc. Mediation Rules and Procedures

Mediation is a process in which parties to a dispute utilize the services of an impartial, third-party mediator in an effort to reach a mutually acceptable agreement. By agreeing to mediate, parties agree to negotiate to attempt to settle their differences. Neither Pre-Trial Solutions Inc. (PTS), nor the mediator has the power or authority to render a binding decision or to force the parties to accept a settlement.

- 1) **Agreement of the Parties.** Whenever parties mediate with PTS, they agree to mediate in accordance with the PTS Mediation Rules and Procedures. At the commencement of the mediation process, the parties or their representatives shall execute a PTS form entitled "Agreement to Mediate," thereby evidencing the willingness of the parties to conduct the mediation in accordance with these rules and procedures.
- 2) **Initiating the mediation process.** To begin the mediation process, either party may contact PTS. PTS will then contact all parties and propose mediation if it has not already been agreed to by all parties.
- 3) **Designation of Mediator.** Upon agreement of the parties to mediate, if the parties have not yet selected a mediator, PTS will assist them in such selection. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or interest in the outcome of the proceedings. Parties agree that Christopher P. Kauders is an employee of PTS and that any other mediator appointed by PTS is an independent contractor.
- 4) **Time and Place.** PTS will work with the parties to establish the time and location of each mediation session.
- 5) **Conduct of Mediation Sessions.** Unless PTS has received prior notice to the contrary, all parties should be represented at the mediation session by counsel. Absent prior agreement, the parties should be in attendance. At the mediation session, the parties should be prepared to discuss the dispute. Such discussions may include reference to relevant documents or a description of witnesses or other evidence. The mediator may ask the parties for written materials or information in advance of the mediation session. At the mediation session(s), the mediator will conduct an orderly settlement negotiation. Parties should be represented by a person with reasonable authority to settle the case. The mediator may conduct separate private meetings (caucuses) with each party in order to improve the mediator's understanding of the positions of the parties.
- 6) **Confidentiality.** The parties recognize that mediation proceedings are settlement negotiations, and that the following shall not be introduced as evidence by the parties in any arbitral, judicial, or other proceeding:

- a. Views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- b. Admissions made by another party in the course of the mediation proceedings;
- c. Proposals made or views expressed by the mediator; or
- d. The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

Furthermore, the parties agree not to subpoena or otherwise require the mediator or PTS administrators to testify or produce records, notes or work product in any future proceedings, and no recording or stenographic record will be made of the mediation session. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non discoverable as a result of its use in the mediation session. In the event the parties do reach a settlement agreement, that settlement agreement will be admissible in court or arbitration proceedings seeking enforcement of the same, unless the parties agree otherwise. Any information disclosed to the mediator in a private caucus shall remain confidential unless the party agrees that it may be disclosed.

7) **Discovery.** If one or more of the parties has a substantial need for discovery in order to prepare for the mediation session, the parties shall attempt to agree on a plan for such necessary discovery. Should they fail to reach agreement, the parties may present the matter to the mediator for a non-binding recommendation.

8) **Not Legal Counsel or Expert.** All parties recognize that at the mediation session(s) and at every other point of the proceedings:

- a. neither PTS nor the mediator will be acting as a legal adviser or legal representative for any of the parties;
- b. neither PTS nor the mediator has a duty to assert, analyze or protect any party's legal rights or obligations, including lien rights, statutes of limitation, or any other time limit or claim requirement;
- c. neither PTS nor the mediator has a duty to make an independent expert analysis of the situation, raise issues not raised by the parties or determine that additional necessary parties should participate in the mediation;
- d. neither PTS nor any mediator can guarantee that a mediation session will result in a settlement. Parties may be represented by an attorney at any stage of the mediation process, and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreements.

9) **Termination of Mediation.** The mediation shall be terminated in any of the following circumstances: by the execution of a settlement agreement by the parties; by a declaration by the mediator to the effect that, in the judgment of the mediator, further efforts at mediation are no longer worthwhile; or by a declaration by any party that the mediation effort is terminated.

10) **Fees.** The parties hereby agree to pay for the mediation services of PTS in accordance with its mediation fee schedule. Attorneys are responsible for payment of any mediation fees incurred on behalf of their clients. Mediation services are not provided on a contingent fee basis; therefore, mediation fees are billed and payable immediately upon receipt of an invoice from PTS. There is no relationship between the outcome of a mediation session and an attorney's obligation to pay his or her share of the mediation costs incurred.

11) **Status of PTS.** PTS, its administrators and mediators are entitled to a qualified good faith immunity from suit arising from their involvement in any case referred to PTS for mediation. Neither PTS, its administrators nor mediators are necessary parties in any proceeding to enforce any settlement agreement.

12) **Amendment of Rules.** These rules may be amended or modified by PTS at any time without notice.