



Virtual Mediation Guidelines & Confidentiality Agreement

CASE NAME

CASE # (Assigned by AIR CRE Mediation)

DATE OF MEDIATION

Thank you for agreeing to mediate your dispute using ZOOM video conferencing. Please download and install the software and/or app from Zoom to participate in the Zoom online mediation session. There is no cost to download and use the Zoom software or application. Once you have downloaded Zoom, you are strongly urged to familiarize yourself with the Zoom system so that you are able to easily participate in your mediation session. There are Zoom tutorials available at <https://support.zoom.us>. Any time spent by the mediator providing either party with more than very basic tips on how to use Zoom will be charged to that party at the hourly rate being charged for the mediation.

1. SECURE WI-FI OR ETHERNET CONNECTION. You will need a strong and secure Wi-Fi or Ethernet (hard-wired) connection for your computer. It is strongly recommended NOT to use any public Wi-Fi system (e.g. provided by food, coffee or retail establishments, libraries, hotels, etc.). A strong Wi-Fi signal is required to avoid difficulty being heard or seen during the mediation session and to avoid disruptions or interruptions during the mediation.

2. DOCUMENT EXECUTION. Whenever possible your mediator uses DocuSign.com as a secure platform for the execution of documents required during your mediation process. DocuSign is widely accepted as a secure, valid way to execute legal documents. It is easy to use. I'd prefer not to offer another option for executing documents. If someone objects let them bring it up at the time. More information can be found at <https://www.docusign.com/>.

BEST PRACTICES AND TROUBLESHOOTING

1. INTERRUPTION FREE ZONE. You agree to take all reasonable measures to ensure that you are not interrupted during your online mediation sessions.

2. TECHNOLOGY HIATUS. Except for the computer or mobile device with which you are participating in your online mediation session, you agree to turn off or put on silent any phones, tablets or computers and disable any alert announcements and/or texts for the duration of your online mediation session. Further, you agree to refrain from the use of social media, email and/or internet search engines, other than as may be necessary to conduct the session, during your online mediation sessions.

3. **EARLY LOG ON.** You agree that whenever possible you will log on to the scheduled mediation session 10 minutes in advance of the scheduled start time so that any technology issues can be resolved, and your mediation session can start on time. Zoom allows you to test your audio and video. Please take advantage of that.
4. **WAITING ROOM.** To preserve the neutrality of your mediator under all circumstances, when you log on you will enter and wait in a “virtual waiting room” until all parties have arrived. Once all parties are logged on and in the waiting room, you will be admitted into the meeting by your mediator. If all parties have not entered the “waiting room” within 5 minutes of the scheduled start time for your mediation session, the mediator will admit all parties who have signed in so that a determination can be made as to how to proceed.
5. **TECHNOLOGY FAILURE PROTOCOL.** You understand that despite all best efforts, at times technology may not operate properly and a scheduled online mediation session may not commence on time or may be interrupted. If you are unable to join a scheduled mediation session, please immediately call your mediator to discuss how to proceed. If your connection to the meeting is interrupted, please attempt to log on again. If you are unable to log on, please call your mediator at the number above. If the technology issues cannot be resolved in a reasonable time, the online mediation session will be postponed and rescheduled as soon as possible.
6. **CAUCUS PROTOCOL.** At times it may be beneficial for the mediator to speak privately with one side. This is called a caucus. The Zoom online platform allows the mediator to create “private rooms” in which participants from one side and the mediator may communicate privately. The side in caucus will not be able to hear the side that is not in caucus. The side not in caucus may continue to speak, confident their privacy will be maintained. If you are the side not in caucus, you agree that if you can discern what is being discussed in the caucus you will IMMEDIATELY close your Zoom connection and call your mediator.
7. **RESPECTFUL ONLINE COMMUNICATION.** Due to the nature of the online forum, it is especially important to allow each participant to finish their comment or statement before responding. The online format can amplify and exaggerate sound, so maintaining a regular speaking voice is important. Finally, please remember that the camera does not always transmit hand gestures or non-verbal cues, so it is important to verbalize all communication during an online mediation session.
8. **CAMERA/AUDIO TIPS.** It is a good idea to have lighting on your face that is sourced from directly behind the camera. Natural light is always a plus. Conversely, a strong light source or window behind you will make it difficult to see your face. Keeping the camera level with your eyes is helpful. Don't place the camera so close to you that only your face can be seen. A neat and simple background is recommended. Please feel free to wear headphones, earbuds etc. if you have trouble hearing your computer's speakers.
9. **COMFORT.** It is important for all parties to understand that mediation is a cooperative effort. It is a time for everyone to come together to seek a solution. Unlike other forms of dispute resolution that can be contentious, mediation is about reaching a solution that is created by the parties in an amicable way. Please be comfortable and relaxed in your approach and outlook.

CONFIDENTIALITY AND PRIVACY

Only people who have reviewed, agreed to and executed the Online Mediation Guidelines & Confidentiality Agreement (below) may be present in the room during the online mediation session. Each party must confirm that they, their attorney and, if applicable, witnesses, are the only persons in the room during the mediation session. The parties must confirm that they cannot be overheard outside the room.

1. The mediation process shall be considered settlement negotiations for the purposes of all state and federal rules protecting disclosure made during settlement negotiations.
2. California Evidence Code sections 703.5 and 1115-1129 apply to the mediation process consistent with California Code of Civil Procedure section 1775.10.
3. Consistent with the principle of mediation confidentiality, no written or oral communications made by any party, attorney, mediator, or other participant in any session in this case may be used for any purpose in a pending or future legal proceedings unless all parties, including the mediator, agree.
4. Disclosure of information that is otherwise privileged shall not change the privileged character of that information.
5. The parties shall not subpoena the mediator(s), or any documents submitted to or prepared by the mediator or in connection with the mediation process. The mediator shall not testify voluntarily on behalf of a party.
6. A written settlement agreement reached as a result of this mediation is admissible in an action to enforce the written settlement agreement.

ABSOLUTE PROHIBITION ON RECORDING. No one, including parties, attorneys, witnesses or any others participating in the mediation session may record the session or any part of it by any means. If anyone learns of any recording of any session, that person will immediately inform the mediator. If the recordings are in your possession you will take immediate measures to destroy the recording and will not disseminate the recording to any third parties. You further agree that you will not transmit a live or deferred video or audio relay of the online mediation sessions to third parties.

This Mediation Confidentiality Agreement does not prohibit the reporting of general statistical and administrative information to AIR CRE.

MEDIATOR'S PHYSICAL LOCATION. Your mediator is in the _____ area.

SIGNATURES

MEDIATOR

SIGNATURE

DATE

CLAIMANT

SIGNATURE

DATE

CLAIMANT'S ATTORNEY

SIGNATURE

DATE

OTHER PARTICIPANT

SIGNATURE

DATE

RESPONDENT

SIGNATURE

DATE

RESPONDENT'S ATTORNEY

SIGNATURE

DATE

OTHER PARTICIPANT

SIGNATURE

DATE