



## ANNEXED IV

# THE RULES OF UNIFORME SELF-ADMINISTERED MEDIATION PROCEDURE AT ACUERDO JUSTO (FAIR AGREEMENT) INSTITUTE

### Foreword

On occasion, parties entering into a civil or commercial contractual relationship do not contemplate out-of-court mechanisms to resolve potential disputes.

To provide parties with an alternative, the Uniform Self-Administered Rules & Procedures are designed for parties having either a commercial or civil dispute, but no previous agreement regarding dispute resolution. Therefore, these Rules & Procedures provide parties with an opportunity to incorporate them into their contracts before a dispute arises, or any time thereafter.

Through these Rules & Procedures, parties are afforded an opportunity to self-administer their dispute, enabling them to appoint neutrals themselves, and overall affording the parties full case management, including the possibility to engage third-party case management, be it through neutrals themselves or through any other third party of their choice.

Lastly, parties acting under these Rules & Procedures are both encouraged and free to consider arranging a multi-tier process allowing them to efficiently transit in their dispute resolution process from non-binding to binding ADR methods.

This document contains the full text of the Uniform Self-Administered Rules & Procedures in English and in Spanish. However, neither set of Rules & Procedures is to be deemed a translation of the other, that is, each is independent of the other, so that no conflict may arise regarding meaning based on language.

### On mediation

Mediation is an alternative dispute resolution method through which two or more parties may explore and reach a negotiated solution to their dispute with the help of a third neutral and disinterested party.

Whether employed to resolve civil or commercial disputes, mediation aims at:

- Strengthening the parties' ability to communicate effectively;
- Reaching solutions adapted to the parties' unique circumstances;
- Helping parties understand and appreciate individual and shared needs;
- Reaching lasting agreements.

### Mediation agreement

"Any dispute arising out of a contract, or out of any other legal relationship between the parties, shall be submitted to mediation in accordance with the Uniform Self-Administered Mediation Procedure at Acuerdo Justo (Fair Agreement) Institute. The parties also agree to participate in a minimum of three mediation sessions."

## UNIFORM SELF-ADMINISTERED MEDIATION PROCEDURE



In effect when parties consent to mediate

### Consent to Mediate

(i) To initiate mediation in accordance with Uniform Self-Administered Mediation Procedure (hereinafter “Procedure”), Submitting Parties (hereinafter “Parties”), shall sign and mutually exchange a document (hereinafter “Consent to Mediate”), expressly signifying their intention to submit their dispute to mediation under this Procedure.

(ii) Before consenting to mediate, the Parties shall ascertain if their dispute can be subject to mediation in accordance with applicable law.

(iii) This Procedure shall constitute the basis of the Parties’ Self-Administered mediation.

(iv) The Parties may modify this Procedure by mutual agreement and in writing.

(v) The parties and/or the mediator are free to engage the services of a secretary of their choice to aid them in administering the mediation under Procedure and under the supervision and responsibility of the mediator provided that both the parties and the mediator agree.

Administration under this Procedure shall revert to the mediator if any or all parties, or if the mediator, object in writing to the continued services of the secretary.

### Nomination and appointment of Mediator

(i) Parties shall have thirty (30) days to nominate a Mediator from the date they sign and exchange their mutual Consent to Mediate agreement. Failure to nominate a Mediator within the aforesaid time limit shall render the Consent to Mediate under this Procedure null and void.

(ii) Parties are free to nominate a Mediator, are free to agree regarding professional qualifications, and may seek whatever professional assistance they may deem appropriate to complete the Mediator nomination process.

(iii) A Mediator having been nominated by the Parties shall acknowledge appointment in writing.

### Duty to disclose

(i) Mediators engaged under this Procedure shall be impartial and independent.

(ii) Mediators shall communicate to all Parties any circumstance that may affect his independence and impartiality. The obligation of the Mediator to communicate any such circumstances shall last throughout the duration of the proceedings.

(iii) A Mediator making a disclosure under 7(ii) hereinabove may communicate directly and unilaterally with the Parties, provided said communication is directed to the Parties simultaneously.

### Initiation and mediator ratification

(i) Parties shall schedule a preliminary session with the mediator within fifteen (15) days from the date of appointment.

(ii) Mediators nominated under this Procedure shall explain to the Parties the nature of mediation as an alternative dispute resolution process, as well as the methodology the Mediator will employ.

(iii) The Parties and the Mediator shall schedule additional sessions to be held.

(iv) Parties mediating under this Procedure shall send to the Mediator a statement outlining the nature of the dispute before the date when the initial session is scheduled to be held.

(v) Parties shall have fifteen (15) days from the date when the preliminary session is held to ratify the Mediator appointment.



(vi) Failure to ratify mediator appointment render the Consent to Mediate agreement under this Procedure null and void, except if the Parties agree to commence the Mediator nomination and appointment procedure anew.

#### Power of mediator

(i) Mediators acting under this Procedure shall have no power to impose a solution on the Parties regarding their dispute, limiting all activity to aiding them in exploring alternatives and reaching a mutually satisfactory agreement.

(ii) Parties mediating under this Procedure authorize the Mediator to hold joint or caucus sessions. When a Mediator calls a Party into caucus, he will not divulge to the absent party any information except with the express authorization of the Party in caucus.

#### Counsel and Attendance

(i) Parties may be represented by counsel or by any other person of their choice.

(ii) Parties shall attend scheduled mediation sessions themselves.

#### Stenographic record

No session may be recorded by any means whatsoever except with the written consent of the parties.

#### Termination of proceedings

Mediation under this Procedure shall terminate when:

a) The Parties mutually agree to terminate mediation in writing communicated jointly to the Mediator;

b) When the Mediator, at his discretion, determines that further sessions are unlikely to resolve the dispute of the Parties.

#### Confidentiality, court applications and arbitration

(i) No Mediator shall voluntarily divulge to third parties the content of any joint or caucus discussions held with the Parties, nor divulge the content of any document provided by the Parties and shall return to the Parties any and all documentation produced throughout the mediation.

(ii) Parties shall not call upon the Mediator to participate in any judicial or out-of-court proceeding regarding any aspect of the mediation conducted under this Procedure.

(iii) A Party moving to compel Mediator testimony shall compensate any and all expenses that may derive therefrom incurred by the Mediator.

(iv) Where applicable law, or a court having jurisdiction, requires that the Mediator divulge confidential information, the Mediator shall comply and the Parties shall hold the Mediator harmless.

#### Agreement of the Parties, Med/Arb

(i) Mediation terminated as a result of the agreement of the Parties on some or all issues, and communicated to the Mediator in writing, shall not require that the Mediator sign the agreement of the Parties.

(ii) Where permitted by applicable law, Mediators acting under this Procedure are free to arbitrate outstanding issues at the request of the Parties, but are under no obligation to do so.