

Sample Mediation Clauses

1. NVMS identified as mediator in clause:

Agreement to Mediate Disputes. In the event a dispute shall arise between the parties to this [contract, agreement, transaction, etc.], the parties agree to participate in at least two hours of mediation in accordance with the mediation procedures of Northern Virginia Mediation Service, Inc. before pursuing other remedies. The parties agree to share equally in the costs of the mediation. The mediation shall be administered by the offices of Northern Virginia Mediation Service, 4260 Chain Bridge Road, Suite A-2, Fairfax, Virginia 22030, 703-993-3656, www.nvms.us.

Mediation involves both sides of a dispute meeting with each other and an impartial mediator to attempt to reach a voluntary and mutually satisfactory agreement that resolves the dispute. In mediation, the mediator(s) will facilitate discussions, negotiations and procedures but will not offer independent analyses, opinions or judgements. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties.

The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

2. Mediator not identified in advance of dispute:

Agreement to Mediate Disputes. In the event that any dispute arises between the parties in relation to this Agreement, or out of this Agreement, and the dispute is not resolved by negotiation, the parties agree to submit the dispute to mediation. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute.

Any party to the dispute may give written notice to the other party of his or her desire to commence mediation, and a mediation session must take place within [30] days after the date that such notice is given.

The parties must jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within [7] days after a party has given notice of a desire to mediate the dispute, any party may apply to the Northern Virginia Mediation Service, or such other organization or person agreed to by the parties in writing, for appointment of a mediator.

The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

3. More elaborate clause with procedures and confidentiality spelled out

Dispute Resolution Procedures. In the event of a dispute related to [contract, agreement, transaction, etc.], the parties shall use the following procedure as a condition precedent to either party pursuing other available remedies:

1. A party who believes a dispute exists (the "disputing party") shall put such dispute in writing to the other party (the "responding party"). Such writing shall briefly and clearly, state the substance and scope of the dispute, the disputing party's position relative thereto and include any legal or factual justifications of which the party is aware and the remedy being sought.
2. The responding party who receives such a writing shall respond succinctly in writing to the disputing party within [ten, etc.] days. Such writing shall include the responding party's response to each of the items included in the disputing party's writing.
3. A telephone conference shall be held within [ten, etc.] days between representatives of the parties having decision-making authority regarding the dispute, to negotiate in good faith a resolution of the dispute.
4. If, within [ten, etc.] business days after such telephone conference, the parties have not succeeded in negotiating a resolution of the dispute, the parties' representatives shall submit the dispute to [a mutually acceptable neutral mediator][the Northern Virginia Mediation Service, 703-993-3656, www.nvms.us]. The fees of the mediator shall be shared equally by the parties.
5. The parties agree to mediate in good faith during a minimum of [one two hour session, one four hour session, two two-hour sessions, etc.] before either party elects to discontinue mediation and pursue other remedies. If the parties are not successful in resolving the dispute through mediation, as above, then the parties may agree to submit the matter to binding arbitration, or either party may pursue other available remedies upon ten days written notice to the other party specifying its intended course of action.
6. The parties may mutually agree to extend any of the time periods stated herein.
7. The parties agree that the mediation provided for here is a compromise negotiation for purposes of all international, federal and state rules of evidence. The entire procedure will be confidential. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, representatives or other invitees to the mediation and by the mediator, who is the parties' joint agent for purposes of these compromise negotiations, are confidential and shall, in addition and where appropriate, be deemed to be attorney client privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative for any of the parties. However, evidence otherwise discoverable or admissible in a later proceeding is not excluded from discovery or admission as a result of its use in the mediation. If not entirely enforceable, the parties intend that the court enforce this provision to the extent enforceable by such court.