

REGULATION
made under the
UNIFORM FRANCHISES ACT
MEDIATION

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PART I **INTERPRETATION**

Definitions

1. In this Regulation,

“court” means *[insert the superior court of record in the jurisdiction]*;

“mediation” means a process in which two or more parties meet and attempt to resolve issues in dispute between or among them with the assistance of a mediator;

“mediator” means a person who assists parties in resolving issues in dispute between or among them, but has no power to unilaterally resolve the dispute;

“party” means a party to a franchise agreement who has a dispute with one or more other parties to the franchise agreement;

“roster organization” means a body authorized by the Attorney General to select mediators for the purposes of this Regulation.

PART II **GENERAL RULES RE APPOINTMENT OF MEDIATOR AND MEDIATION**

Application of Part

2. This Part applies to mediation of a dispute that is initiated by a notice to mediate delivered before or after a legal proceeding or arbitration in respect of the dispute has been commenced.

Appointment of mediator

3. (1) Upon a notice to mediate being delivered under subsection 8 (3) of the Act, the parties shall jointly appoint a mediator,

- (a) if there are four or fewer parties to the dispute, within 14 days after the notice to mediate was delivered to all the parties to the franchise agreement under subsection 8 (3) of the Act;
- (b) if there are five or more parties to the dispute, within 21 days after the notice to mediate was delivered to all the parties to the franchise agreement under subsection 8 (3) of the Act.

(2) If the parties fail to jointly appoint a mediator within the time required by subsection (1), any party may apply to a roster organization for the appointment of a mediator, or if there is no roster organization, any party may apply to court for the appointment of a mediator.

(3) The roster organization or court shall, within seven days after receiving an application by a party under subsection (2), provide each of the parties with the same list of at least six proposed mediators.

(4) Within seven days after receiving the list from the roster organization or court, each party shall return the list to the organization or court with the mediators numbered in the order of the party's preference, with one being the number given to the most preferred mediator.

(5) A party may also delete a maximum of two names from the list before returning it to the roster organization or court.

(6) A party that does not return the list as required by subsection (4) shall be deemed to have accepted all the names on the list.

(7) Within 14 days after receiving an application by a party under subsection (2), the roster organization or court shall appoint a mediator from the names remaining on the list or, if no names remain on the list, shall appoint any person as the mediator, and shall notify each of the parties in writing of the name of the appointed mediator.

(8) If the mediator appointed by the roster organization or court is unable or unwilling to act as mediator in the dispute, the mediator or any party may notify the organization or court of the fact.

(9) Within seven days after being notified under subsection (8), the organization or court shall appoint another person as mediator from the names remaining on the list or, if no names remain on the list, shall appoint any person as the mediator, and shall notify each of the parties in writing of the name of the appointed mediator.

(10) In appointing a mediator under subsection (7) or (9), the roster organization or court shall take into account,

- (a) the order of preference indicated by the parties on the returned lists;
- (b) the requirement that a mediator be neutral, independent and impartial vis a vis the parties and the dispute;
- (c) the qualifications of the persons who may be appointed;
- (d) the fees charged by the persons who may be appointed;
- (e) the availability of the persons who may be appointed;
- (f) the nature of the dispute; and
- (g) any other consideration that the organization or court considers relevant to the selection of an impartial, competent and effective mediator.

(11) A mediator appointed by the roster organization or court shall be deemed to be appointed on the date on which the parties are notified under subsection (7) or (9).

Pre-mediation conference

4. If the mediator is of the opinion that the dispute is complex, he or she may hold a pre-mediation conference with the parties in order to consider organizational matters, including,

- (a) identification of the issues that are to be addressed by the mediation;
- (b) the exchange of information and documents before mediation; and
- (c) scheduling and timing matters.

Exchange of information

5. (1) Each party shall deliver to the mediator and the other parties a statement of facts and issues setting out the factual and legal basis for the party's claim or defence to relief sought in the dispute.

(2) The statement of facts and issues shall be delivered to the mediator and the other parties not less than 14 days before the first mediation session is scheduled to be held.

Costs of mediation

6. (1) The parties shall jointly complete and sign a mediation costs declaration setting out,

- (a) the costs of the mediation; and
- (b) the allocation of the costs of the mediation between or among the parties.

(2) The parties shall share the costs of the mediation equally or as otherwise provided in the mediation costs declaration.

(3) The mediation costs declaration shall be completed before or at the pre-mediation conference, if there is one, and if there is not a pre-mediation conference, before or at the first mediation session.

(4) The mediation costs declaration is binding on all the parties.

(5) Despite subsection (4), a court may include in an award of costs to a party to a proceeding in respect of the same dispute that the mediation addressed any amount in compensation of the party's costs of the mediation as set out in the mediation costs declaration.

Parties' attendance

7. (1) Each party is required to attend a pre-mediation conference or mediation session scheduled by the mediator.

(2) A party is in compliance with subsection (1) if the party is represented at a pre-mediation conference or mediation session,

- (a) by counsel; or
- (b) by another person if,
 - (i) the party is not an individual,
 - (ii) the party is under a legal disability and the other person is the party's legal guardian,
 - (iii) the party is suffering from a mental or physical injury or impairment such that he or she cannot effectively participate, or
 - (iv) the party is not a resident of *[insert jurisdiction]* and is not in *[insert jurisdiction]* at the scheduled time.

(3) A person who represents a party at a pre-mediation conference or mediation session under clause (2) (b) must,

- (a) be familiar with all the relevant facts on which the party he or she represents intends to rely; and
- (b) either,
 - (i) have full authority to settle the dispute on the party's behalf, or
 - (ii) be able to communicate promptly with the party or with another person who has full authority to settle the dispute on the party's behalf.

(4) A party or a party's representative may be accompanied by counsel at a pre-mediation conference or mediation session.

(5) Any other person may attend a pre-mediation conference or mediation session with the consent of all the parties.

(6) For the purposes of this section, any person, including a party, may attend a pre-mediation conference or mediation session by telephone or other electronic means if,

- (a) the person is not a resident of *[insert jurisdiction]*; and
- (b) the person is not in *[insert jurisdiction]* at the time of the conference or session.

Conduct of mediation

8. (1) The mediator shall schedule the dates, times and locations of the pre-mediation conference, if any, and the mediation sessions.

(2) The mediator shall conduct the pre-mediation conference, if any, and the mediation sessions in the manner he or she considers appropriate to assist the parties to reach a resolution of the dispute that is fair, timely and cost-effective.

Conclusion of mediation

9. (1) A mediation is concluded when,

- (a) all the issues are resolved; or
- (b) the mediator terminates the mediation prior to the issues being resolved.

(2) When a mediation is concluded, the mediator shall complete a certificate of completed mediation and deliver a copy of it to each of the parties. *[if the jurisdiction's Ministry of the Attorney General has a dispute resolution office, insert "and to the dispute resolution office in the Ministry of the Attorney General"]*.

PART III PRE-LITIGATION MEDIATION — SPECIFIC RULES

Application of Part

10. This Part applies to mediation of a dispute that is initiated by a notice to mediate delivered before any legal proceeding or arbitration in respect of the dispute has been commenced.

Notice to mediate

11. A notice to mediate may be delivered under subsection 8 (3) of the Act no earlier than 16 days after a notice of dispute was delivered under subsection 8 (1) of the Act.

Timing of mediation

12. (1) Mediation of the dispute must begin within 45 days after a mediator is appointed under section 3, unless another date,

- (a) is specified by the mediator in writing with the agreement of all the parties; or
- (b) is ordered by the court under subsection (2).

(2) Upon an application by any party to court, the court may, on the terms and conditions that the court considers appropriate,

- (a) extend the time in which the mediation must begin;
- (b) whether or not the court extends the time under clause (a), fix a date on which the mediation must begin.

(3) Upon an application under subsection (2), the court shall take into account all of the circumstances, including,

- (a) whether a party intends to bring a motion for summary judgment, summary trial or for a special case; and
- (b) whether the mediation will be more likely to succeed if it is postponed to allow the parties to acquire more information.

Time limits on mediation

13. (1) The mediator shall terminate the mediation, whether or not the issues are resolved, after 10 hours of mediation.

(2) The mediator may terminate the mediation earlier if he or she is of the opinion that the mediation is not likely to be successful.

(3) Despite subsection (1), the mediator may extend the mediation, with the agreement of all the parties, if the mediator is of the opinion that the mediation is likely to be successful with the additional time.

Defaults

14. (1) Any party who is of the opinion that another party has failed to comply with a provision of this Regulation may apply to the court for an order under subsection (3) by filing with the court,

- (a) an allegation of default; and
- (b) any affidavits in support of the application.

(2) Before making an application under subsection (1), the party shall deliver to each of the other parties the documents described in that subsection.

(3) Upon an application made under subsection (1), the court may,

- (a) direct, on the terms and conditions that the court considers appropriate, that a pre-mediation conference or mediation session be held;
- (b) direct that the party who is the subject of the allegation of default attend a pre-mediation conference or mediation session;
- (c) direct that the party who is the subject of the allegation of default deliver a statement of facts and issues to the mediator and the other parties;
- (d) direct the party who is the subject of the allegation of default to comply with any other requirement of this Regulation;
- (e) adjourn the application;
- (f) dismiss the application if the court is of the opinion that the party who is the subject of the allegation of default did not commit the alleged default or has a reasonable excuse for the default;
- (g) make any order it considers appropriate with respect to costs of the application;

- (h) make any other order it considers appropriate; or
- (i) make any combination of orders described in clauses (a) to (h).

(4) If the court is of the opinion that public disclosure of the allegation of default and the supporting affidavits would cause hardship to any party, the court may,

- (a) order that all or any part of the allegation of default and supporting affidavits be treated as confidential, sealed and not form part of the public record; or
- (b) make any other order respecting the confidentiality of the documents that the court considers appropriate.

(5) In a legal proceeding or arbitration in respect of the same dispute that is the subject of the mediation, the court or arbitrator may consider an allegation of default in making any order respecting costs in the proceeding or arbitration.

PART IV POST-LITIGATION MEDIATION — SPECIFIC RULES

[this Part to be excluded in jurisdictions with general rules of court for post-litigation mediation applicable to franchise disputes]

Application of Part

15. This Part applies to mediation of a dispute that is initiated by a notice to mediate delivered after a legal proceeding or arbitration in respect of the dispute has been commenced.

Notice to mediate

16. Unless otherwise ordered by the court, a notice to mediate may be delivered under subsection 8 (3) of the Act no earlier than 16 days after a notice of dispute was delivered under subsection 8 (1) of the Act and no later than 45 days after the first defence has been filed in the legal proceeding or arbitration.

Timing of mediation

17. (1) Mediation of the dispute must begin within 45 days after a mediator is appointed under section 3 and not later than seven days before the date of the trial of the same dispute, unless another date,

- (a) is agreed to by all the parties and confirmed by the mediator in writing; or
- (b) is ordered by the court under subsection (2).

(2) Upon an application by any party to court, the court may, on the terms and conditions that the court considers appropriate,

- (a) extend the time in which the mediation must begin;
- (b) whether or not the court extends the time under clause (a), fix a date on which the mediation must begin.

(3) Upon an application under subsection (2), the court shall take into account all of the circumstances, including,

- (a) whether a party intends to bring a motion for summary judgment, summary trial or for a special case; and
- (b) whether the mediation will be more likely to succeed if it is postponed to allow the parties to acquire more information.

Limitation on mediation

18. Unless the court orders otherwise, no more than one mediation under this Part may be initiated in respect of the same dispute.

Defaults

19. (1) Any party who is of the opinion that another party has failed to comply with a provision of this Regulation may apply to the court for an order under subsection (3) by filing with the court,

- (a) an allegation of default; and
- (b) any affidavits in support of the application.

(2) Before making an application under subsection (1), the party shall deliver to each of the other parties the documents described in that subsection.

(3) Upon an application made under subsection (1), the court may,

- (a) direct, on the terms and conditions that the court considers appropriate, that a pre-mediation conference or mediation session be held;
- (b) direct that the party who is the subject of the allegation of default attend a pre-mediation conference or mediation session;

- (c) direct that the party who is the subject of the allegation of default deliver a statement of facts and issues to the mediator and the other parties;
- (d) direct the party who is the subject of the allegation of default to comply with any other requirement of this Regulation;
- (e) adjourn the application;
- (f) stay the legal proceeding or arbitration commenced in respect of the same dispute that is the subject of the mediation until the party who is the subject of the allegation of default attends a pre-mediation conference or mediation session;
- (g) dismiss the legal proceeding or arbitration commenced in respect of the same dispute that is the subject of the mediation or strike out the statement of defence in the legal proceeding or arbitration and grant judgment in the legal proceeding or grant an award or make a determination in the arbitration;
- (h) dismiss the application if the court is of the opinion that the party who is the subject of the allegation of default did not commit the alleged default or has a reasonable excuse for the default;
- (i) make any order it considers appropriate with respect to costs of the application;
- (j) make any other order it considers appropriate; or
- (k) make any combination of orders described in clauses (a) to (j).

(4) If the court is of the opinion that public disclosure of the allegation of default and the supporting affidavits would cause hardship to any party, the court may,

- (a) order that all or any part of the allegation of default and supporting affidavits be treated as confidential, sealed and not form part of the public record; or
- (b) make any other order respecting the confidentiality of the documents that the court considers appropriate.

(5) In a legal proceeding or arbitration in respect of the same dispute that is the subject of the mediation, the court or arbitrator may consider an allegation of default in making any order respecting costs in the proceeding or arbitration.

PART V FORMS

Forms

20. (1) The notice of dispute to be delivered under subsection 8 (1) of the Act shall be in Form 1.

(2) The notice to mediate to be delivered under subsection 8 (3) of the Act shall be in Form 2.

(3) The statement of facts and issues to be delivered to the mediator and the other parties under section 5 or which may be ordered by a court under section 14 or 19 to be delivered to the mediator and the other parties shall be in Form 3.

(4) The mediation costs declaration to be completed under section 6 shall be in Form 4.

(5) The allegation of default that may be filed under section 14 or 19 shall be in Form 5.

(6) The certificate of completed mediation to be completed under section 9 shall be in Form 6.

FORM 1
NOTICE OF DISPUTE

Uniform Franchises Act

TO:

AND TO:

[insert other party or parties to the dispute]

[insert name of party] asserts that,

1. The following is the nature of the dispute:

2. The following is the desired outcome of the dispute:

.....
Date

.....
Signature of party issuing notice of dispute

.....
*Name, address, telephone number and fax number of lawyer
of party issuing notice of dispute, or of party*

FORM 2
NOTICE TO MEDIATE

Uniform Franchises Act

in the dispute between/among *[insert parties to the dispute]*

TO:

AND TO:

[insert other party or parties to the franchise agreement]

TAKE NOTICE that the dispute between/among _____ will be mediated in accordance with the Mediation regulation under the *Uniform Franchises Act*.

The parties to the dispute must jointly appoint a mediator,

- (a) if there are four or fewer parties to the dispute, within 14 days after delivery of this notice; or
- (b) if there are five or more parties to the dispute, within 21 days after delivery of this notice.

Otherwise, any of the parties to the dispute may apply to a roster organization, or if there is no roster organization, to the court, for the appointment of a mediator.

.....
Date

.....
Signature of party issuing notice to mediate

.....
Name, address, telephone number and fax number of lawyer of party issuing notice to mediate, or of party

FORM 3
STATEMENT OF FACTS AND ISSUES

Uniform Franchises Act

in the mediation between/among *[insert parties to the dispute]*

(To be provided to the mediator and parties not less than 14 days before the first mediation session)

1. Factual and legal issues in dispute

[Insert name of party] states that the following factual and legal issues are in dispute and remain to be resolved.

(Issues should be stated briefly and numbered consecutively.)

2. Party's position and interests (what the party hopes to achieve)

(Brief summary)

3. Attached documents

Attached to this form are the following documents that the above-named party considers of central importance in the mediation:

(list)

.....
Date

.....
Signature of party filing statement of facts and issues

.....
Name, address, telephone number and fax number of lawyer of party filing statement of facts and issues, or of party

FORM 4
MEDIATION COSTS DECLARATION

Uniform Franchises Act

in the mediation between/among *[insert parties to the dispute]*

We are participating in a mediation under the Mediation regulation under the *Uniform Franchises Act*.

The costs of the mediation will be \$____ for a completed mediation or will be calculated at \$____ per hour, plus necessary disbursements, or will be calculated as follows:

We will pay the cost of the mediation in equal shares or as follows:

We make this declaration under the Mediation regulation under the *Uniform Franchises Act*.

.....
Date

.....
Party's signature

.....
Name of party

.....
Party's signature

.....
Name of party

.....
Party's signature

.....
Name of party

FORM 5
ALLEGATION OF DEFAULT

Uniform Franchises Act

IN THE *[insert superior court of record in the jurisdiction]*

[Insert name of party] states that *[insert name of party alleged in default]* has failed to comply with the following provisions of the Mediation regulation under the *Uniform Franchises Act*:

(List provisions and briefly describe the nature of the alleged default.)

Attach any affidavits in support.

.....
Date

.....
Signature of party filing allegation of default

.....
*Name, address, telephone number and fax number of lawyer
of party filing allegation of default, or of party*

FORM 6
CERTIFICATE OF COMPLETED MEDIATION

Uniform Franchises Act

in the mediation between/among *[insert parties to the dispute]*

TO:

AND TO:

[insert parties to the dispute]

I certify that the mediation between/among *[insert parties to the dispute]* is concluded.

The following issues are resolved as follows:

The following issues remain unresolved:

.....
Date

.....
Mediator's signature

.....
Name, address, telephone number and fax number of mediator