



## AAA-ICDR® Model Order and Procedures for Mediation via Videoconference

AAA is providing this document as a model or template which the mediator and the parties can modify to fit the specific needs of their specific case. The model order may not be a good fit for every AAA case, but even in those situations, it may provide guidance as to issues the mediator and parties could consider. Based on the circumstances of the specific case before them, a mediator or parties may make decisions or take actions different from those noted below.

### 1. Agreement to Videoconference:

- A. The parties and the mediator agree that the mediation in this case will be conducted via [Platform Name] videoconference.
- B. The parties acknowledge that they have made their own investigation as to the suitability and adequacy of [Platform Name] for its proposed use for the video-conferenced mediation and of any risks of using [Platform Name], including any risks regarding its security, privacy or confidentiality, and they agree to use [Platform Name] for the mediation.

### 2. Prohibition of Mediation Recording:

- A. The parties and counsel agree that they will not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the mediation or any part of it. The parties and counsel will ensure that each additional attendee at the mediation for which that party is responsible also acknowledges and agrees to this prohibition on recording.

### 3. Technical Aspects:

#### A. Invitations to Access Mediation:

The [AAA case manager/mediator] will invite attendees via email to join the [Platform Name] mediation. To protect the security of the mediation access to the session will be password-protected and limited to authorized attendees only. Mediation attendees should not forward or share the mediation link or password.

In order to facilitate e-mail invitations for the mediation, no later than XX, the parties shall circulate to the AAA a list of each attendee's name, e-mail address, and phone number (where they will be reachable on the day(s) they attend the mediation).

#### B. Advance Testing of System:

- i. At least one week before the mediation, counsel and the mediator will test the videoconferencing system to ensure that all (parties, representatives and any other necessary participants) can connect and that their video and audio systems work (and noting camera settings, lighting, delays/time lags, clarity, volume, feedback, and other sound disruptions).



- ii. The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of all participants.
- iii. Each participant should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset.

**C. Back-Up Conference Call Line:**

The parties/AAA shall reserve an optional dial-in conference call number in case one or more participants has poor quality computer audio (after trying the audio connection through the computer – with and without a headset – and by phone).

**D. Mediation Participants:**

- i. Each party will inform the mediator and all other parties/counsel [XX] days before the mediation the names of all persons who will attend, participate in or will be able to hear any communications in the mediation using [Platform Name], including any technicians assisting the party or counsel. The parties agree that no persons will attend, participate or be allowed to listen in on the mediation without the prior consent of all parties and the mediator.
- ii. Each attendee of the mediation shall disclose at the start of each session all people in the room with the attendee. Should an individual join the attendee after the session has begun, that individual should be identified to counsel and the mediator at the earliest opportunity.
- iii. During the videoconference, the participants shall always be in view of the camera. If two or more people are attending the mediation together in a room, they shall use a single camera, which shall be placed to provide a view of a reasonable part of, if not the entire, room.

**E. Ensuring Good Audio/Video: Mediation participants shall make best efforts to ensure that there will be clear video and audio transmission during the session Participants should:**

- i. consider steps that may be taken to establish a high-speed internet connection (e.g., if possible, a hard-wired internet connection is generally preferable to a wireless internet connection);
- ii. use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into audio portion of the platform (or if necessary, use the back-up conference call number if the computer and platform audio are of poor quality);
- iii. eliminate any background noise;
- iv. consider camera positioning and lighting (e.g., avoid sitting near a window, positioning a light in front of (instead of behind) the participant);
- v. access [Platform Name] via desktop or laptop rather than by smartphone or tablet;
- vi. ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and
- vii. not join the session from a public setting or using unsecured, public wi-fi to ensure the privacy and security of the mediation.



- F. All counsel shall endeavor to speak one at a time and not while another is speaking, other than as may be required to alert other participants of technical difficulties.
- G. For each person participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice.
- H. Each participant in the mediation shall have accessible a computer or other device with email [and a printer to which the device can print exhibits or other documents if needed].

4. Mediation Schedule & Logistics:

- A. The mediation shall commence on \_\_\_\_\_, 2020, and it will be begin at 9 a.m. [time zone], with morning, lunch, and afternoon recesses at such times as the mediator determines in its discretion are appropriate. It is recommended that all participants access the virtual session room early.
- B. Upon joining the [Platform Name] session, participants will be admitted to a virtual Waiting Room [if offered by the platform]. Unless the parties and mediator have agreed not to start the mediation with a joint session, the mediator will admit all participants to the mediation room at the same time. The mediator will also make use of breakout rooms for individual caucuses. Attendees should not disconnect from the [Platform Name] meeting during any recess. However, lines may be muted during this time.

5. Technical Failure:

- A. Should one party's or participant's videoconferencing connection fail, such participant shall e-mail all attendees, by replying all to the [Platform Name] invitation circulated by the mediator, and shall monitor e-mail for any further instructions from the mediator. [name and number] is the designated person and number to contact in the event that parties or counsel are disconnected.
- B. If the videoconferencing system fails to work such that the mediation cannot take place as scheduled, or if the mediator determines that the videoconferencing system otherwise does not allow the parties to adequately participate in the mediation or that it would be unfair to any party to continue the mediation via videoconference, the mediator may reschedule the mediation or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the mediation.

6. Costs of Videoconferencing: The parties agree that the costs of using [Platform Name] for the mediation will in the first instance be borne equally between them, 50% to Claimant and 50% to Respondent [if not equally split, or if more than 2 parties, need to specify how to allocate costs]. [For Consumer or Employment cases – The parties agree that the costs of using [Platform Name] for the mediation will in the first instance be borne 100% by the business/employer.]

For the avoidance of doubt, the parties agree that those costs are included in the costs of the mediation, as specified in the applicable Rules.