

Rule 16: Confidentiality and Disclosure

- (a) Mediation is a private and confidential process.
- (b) The Mediator, the parties, their representatives experts, advisors and any other persons who accompany the parties to the Mediation shall keep confidential and shall not disclose to any non-party any information, documents, and communications that are created, disclosed, received, or made available in connection with the Mediation except:
 - (i) with the parties' written consent;
 - (ii) when ordered to do so by a court of competent jurisdiction or otherwise required to do so by law;
 - (iii) when the information or documents disclose an actual or potential threat to human life or damage to property;
 - (iv) where any report or summary is required to be prepared by the Mediator;
 - (v) where the information is, or the documents are, otherwise available to the public.
- (c) Confidentiality also extends to the settlement agreement, except where its disclosure is necessary for implementation or enforcement.
- (d) Nothing that transpires during the course of the mediation is intended to or shall in any way affect the rights or prejudice the position of the parties to the dispute in any subsequent litigation or other dispute resolution process.
- (e) The parties have the option to produce any document they wish; the Mediator shall not have the power to compel the disclosure of any document. The Mediator may keep copies of documents, but not the originals, during mediation.

- (f) Thirty days after mediation is concluded, the Mediator shall destroy all information, documents, and communications created by, disclosed to, received by, or made available to him/her in connection with the Mediation unless otherwise agreed by the parties in writing.
- (g) The Mediator shall obtain, in writing, from all experts and consultants engaged by the Mediator, commitments to similar obligations of confidentiality as are provided for in these Rules.
- (h) The Mediator shall maintain confidentiality in the storage and disposal of mediation notes, records, files, information, documents, and communications.
- (i) If the Mediator holds private sessions with any or both parties, she/he shall generally indicate to the parties the purpose of such session(s) before commencing a private session. In particular, the Mediator shall inform the parties of any limits to confidentiality applicable to information disclosed during private sessions.
- (j) The parties agree that Mediation sessions are without prejudice settlement negotiations and disclosures are inadmissible in any further litigation or arbitration except to the extent required by law. The parties shall not sub poena or otherwise require the Mediator to testify or produce records or notes in any future proceedings.
- (k) The parties agree that they shall not rely on or adduce as evidence in subsequent arbitral or judicial proceedings any of the following:
 - (i) views expressed and suggestions or offers made in respect of a possible settlement of the dispute;
 - (ii) any admission made in the course of the Mediation;
 - (ii) any and every exchange between the parties and the mediator.