

GUIDELINES FOR VIRTUAL MEDIATION PROCEEDINGS

These guidelines address circumstances that are unique to a virtual mediation proceeding. They are intended to assist the Mediator and Parties in a mediation by supplementing procedural terms that otherwise govern the conduct of the proceeding. They can also be readily adapted for use where some participants are together in a location and others appear remotely. While these guidelines are intended for use with the Zoom cloud conference facility, they can be adapted for use with other similar platforms.

1. **Videoconferencing Platform and Virtual Hearing Support Functions**

1.1 **Platform.** Utah ADR Services has selected the Zoom platform for enabling virtual mediation proceedings. This is not intended to be, nor shall it constitute, an endorsement of Zoom, nor a warranty or guarantee that the Zoom platform will perform as intended, provide adequate security, privacy, or functionality. It is a measure taken, in light of the unusual circumstances facing the legal profession and the world at this time, to be able to move forward with the administration of justice and the resolution of disputes in a practical manner. **Participation in the mediation through the use of Zoom constitutes the consent of all parties and a waiver of any liability of Utah ADR Services and the Mediator for the performance of the Zoom technology.**

1.2 **Download Zoom App.** Well ahead of the mediation, each participant will need to download the free Zoom app to the device(s) that will be used for the mediation. For desktops and laptops, go to www.zoom.us, sign up and download the app to your desktop or laptop. It's free and download time is minimal. If you plan to use a tablet or iPad, go to your app store and search on "Zoom Cloud Meetings" and download the app to your device. Downloading ahead of time will save time when joining Zoom meetings originated by any other "Host." It will also enable you to use the Zoom conferencing app yourself for free, with certain limitations.

1.3 **Assistance of Hearing Support Provider.** The Utah ADR Services Case Manager, who is trained in Zoom, will be available at all times during the proceeding to assist with technical issues that may come up. All Participants and the Case Manager will exchange contact information in advance of the hearing so immediate attention can be given off-line to any technical problems that may arise.

1.4 **Costs.** Utah ADR Services is providing hearing support at no cost to the Parties. Administrative costs and neutral fees are incurred at the same level as traditional proceedings. Unless advised otherwise in writing by the parties, costs shall be borne equally by the Parties.

2. **Preparation by Participants**

2.1 **Equipment.** Each participant in the proceeding – mediators, counsel, parties, party representatives, and if applicable, interpreters (each a "Participant") -- shall be required to test the compatibility of that Participant's equipment (e.g., laptop, desktop computer, webcam, headphones) with the Zoom platform, reasonably in advance of the group test session described below. It is highly recommended that each Participant have

ready access to a printer, as well as the computer equipment mentioned above. Each Participant is responsible for ensuring the compatibility and functioning of that Participant's equipment.

2.1.1 **Screen Size.** No Participant shall use a device with a screen size, measured diagonally, of less than 11 inches (*i.e.*, smartphones are not permitted except with the approval of the Mediator for exigent circumstances).

2.1.2 **Bandwidth.** Each Participant is responsible for ensuring that the remote location in which the Participant is located has adequate internet bandwidth to support the use of the Zoom platform without interruption. Other users of the Participant's LAN should be instructed to avoid computer processes that will use substantial bandwidth during the Participant's involvement in the proceeding. For security reasons, do not use a public WiFi network connection.

2.1.3 **Camera.** Participants must locate their webcams so that the Participant appears, well lit, against a not-distracting background, with only head and shoulders visible. Backlighting should be avoided.

2.2 **Orientation Program.**

Each Participant is urged participate in one or more on-line orientation or training programs offered by Zoom (www.support.zoom.us) to familiarize themselves with the Zoom platform's features and operation, unless the Participant has substantial and successful prior experience with the Zoom platform.

2.3 **Test Session.**

It is suggested that, at least 48 hours before the scheduled start of the proceeding, or such shorter time as the Mediator approves in light of exigent circumstances, all Participants not readily familiar with the Zoom platform should participate in a non-substantive test session devoted solely to the operation of the Zoom platform. This session will be organized by the Administrator or the Mediator.

3. **Interpreters.**

If any Participant requires the use of an interpreter, the Mediator, in consultation with the Parties, shall determine whether interpretation shall be consecutive or simultaneous and appropriate technical arrangements made and tested for interpreter participation.

4. **Requirements During the Proceeding**

4.1 **Advance Log-On.** All Participants shall log on to the Zoom platform at least 10 minutes in advance of the scheduled start time of the proceeding. The proceeding shall not begin until the Mediator has satisfied him/herself that all necessary Participants are adequately connected to the Zoom platform.

4.2 **Emergencies During Hearing.** Technical problems are rare, but when they do occur, it is important to manage them quickly. Logging off and back in again will often solve a problem. Otherwise, the Case Administrator shall be notified off-line, in

accordance with previously exchanged contact information, of any emergency arising out of technical difficulties during the hearing. In the event the problem cannot be resolved in a reasonable time, the Mediator shall confer with the Parties off-line, in a conference telephone call arranged by the Case Administrator, to provide a reasonable solution to the problem in terms of scheduling, format, timing, etc., consistent with the interests of justice and practicality. Other emergencies will be managed in a similar manner by the Mediator.

4.3 Disclosure of Participants. At the outset of the proceeding each Participant shall identify any other persons present at the Participant's location. Each Participant has an ongoing obligation to alert the Mediator and other Parties if any additional person joins the Participant, and shall represent at the beginning and end of each session that the Participant has fully disclosed all persons who have or had access to the proceeding or any portion of it.

4.4 Confidentiality. The Parties shall take all steps necessary to ensure the confidentiality of the proceeding. No person shall have access to the live video and/or audio feed of the proceeding other than disclosed Participants. The mediation begins when the first contact with the Mediator occurs and continues until a settlement has been reached and documented, or until all parties and the Mediator agree that the mediation is otherwise concluded.

4.5 Recording and Transcription. No Participant may record, broadcast, take screen shots of, or copy any part of the proceeding, without the written consent of the Mediator.

5. Documenting the Settlement.

5.1 Put It In Writing. It is essential to end a successful mediation with a memorandum of the agreement "with sufficient particularity to be enforceable under the law."

5.2 Drafting. The drafting process can be handled in a number of different ways. The Parties and the Mediator will adapt the documentation to the particular circumstance of the case.

5.3 Signing. The Mediator, the Parties, and counsel can decide upon the method of execution appropriate to their case.

STW 26 May 20