

THE AIRROC DISPUTE RESOLUTION PROCEDURE

August 2023 Edition



THE AIRROC DISPUTE RESOLUTION PROCEDURE

The AIRROC Dispute Resolution Procedure (the “Procedure”) was developed to support AIRROC’s membership by providing a cost-effective streamlined process for dispute resolution that resolves disputes through Arbitration or Mediation with a minimum of expense and delay.

It has three components: 1) An Arbitrator and Mediator List that includes Arbitrators/Mediators with at least 10 years of insurance industry experience, 5 years of run-off insurance experience, and experience with AIRROC and/or its members; 2) Process outlines for Arbitration and Mediation that specify critical components and highlight options so participants can tailor the proceedings to suit their business needs; and 3) a process for AIRROC to help resolve any impasse in choosing arbitrators or mediators.

AIRROC Arbitration Process

I. Arbitrator List

A. The AIRROC List of Arbitrators/Mediators can be found on the AIRROC website under the “Dispute Resolution” dropdown menu.¹ The information provided about each Arbitrator and Mediator on these lists includes the following:

- link to a full resume of the arbitrator/mediator,
- number of years of insurance industry experience,
- number of years handling run-off matters,
- whether they are ARIAS certified arbitrators or mediators (with link to ARIAS profile)
- number of party arbitrator appointments, number of umpire appointments,
- current rates, and whether the arbitrator/mediator requires a retainer for these matters,
- whether the arbitrator prefers appointments as a *neutral* arbitrator/umpire or a party arbitrator.
- AIRROC experience (attendance at events, participation in Digital Content communications, participation in training seminars, etc.)
- date of last update of the information on the chart

B. Notwithstanding the above, AIRROC relies on the information provided by applicants and makes no representations whatsoever regarding its accuracy or completeness.

¹ The List of Arbitrators/Mediators can be found here:
https://airroc.memberclicks.net/index.php?option=com_community&view=search&searchId=95649

- C. Commencing January 1, 2023, all listed Arbitrators/Mediators are responsible for updating their information on the website every year or whenever necessary to accurately reflect their experience and qualifications. As part of that process, arbitrators/mediators will be asked to state how many times in the last calendar year they were appointed as an Arbitrator, Umpire, or Mediator pursuant to these Procedures.
- D. AIRROC reserves the right at any time to: (1) approve or disapprove a candidate's application for inclusion on the Arbitrators/Mediators List; (2) remove an Arbitrator's or Mediator's name from the List; or (3) amend the criteria for inclusion (including retroactive application to persons who qualified under previous criteria).
- E. Before accepting any appointment, Arbitrators or Mediators must indicate their willingness to comply with the time parameters specified in the Procedure or any specified by the parties.

II. Arbitration Proceeding

- A. To begin using the Arbitration Procedure, a party completes an **Initiation of Proceedings Form** ("IOP") (Form 1) or sends a letter including the information below:
- B. The Initiation of Proceedings Form or letter will include:
 - 1) substantive issues in dispute and contracts at issue.
 - 2) whether the party wishes to proceed with one neutral arbitrator or a three-arbitrator panel (2 party arbitrators and an umpire) and name of the proposed arbitrator (neutral or party);
 - 3) contact information of the person(s) responsible for handling the arbitration.
 - 4) contemplated need for documents or other discovery.
 - 5) need, length, and form of hearing plus a description of the evidence to be presented at a hearing;
 - 6) choice of law and
 - 7) choice of location for the proceeding.
- C. The responding party will respond with its counter-position to each point and state, if necessary, its counterproposal. The respondent may use the IOP (Form 1) or a responsive letter. Response to the Initiation of Arbitration Proceedings Form will be made within the time provided in the original contracts unless amended by the parties. If the contracts provide no response time, the respondent will respond within 14 days.
- D. If the parties proceed with a three-member panel, the party appointed arbitrators will select an umpire from the AIRROC list within the time specified in the contracts or within 10 days if not specified in the contracts.
- E. To initiate the AIRROC-administered arbitrator or umpire selection process described in Section III of the Procedure, the parties must jointly submit to AIRROC's Executive Director: (1) the completed IOP; and (2) an **Arbitrator/Mediator Referral & Disclosure Form** (Form 3A) with Part I completed. (Part II of the latter form is for prospective

arbitrators to complete and shall be left blank by the parties.) Arbitrator or Umpire selection will then proceed in accordance with Section III.

- F. An alternative *Arbitrator/Mediator Referral & Disclosure Form* designed to assist the parties in selecting arbitrators or a mediator is attached as **Form 3B**. If the parties wish to proceed with one neutral arbitrator or a mediator, no party shall have *ex parte* communications with any prospective arbitrator or mediator. [*Ex parte* communication with party arbitrators will be cut-off during the arbitration process as agreed by the parties].
- G. The parties shall send the completed IOP to the arbitrator, panel, or mediator no later than the time of their selection.

III. AIRROC-Administered Arbitrator Selection

- A. AIRROC is available to assist in neutral arbitrator or umpire selection when requested by the parties. After it receives the IOP and the *Arbitrator/Mediator Referral & Disclosure Form* (Form 3A) submitted by the parties (*see* Section II.C.), AIRROC will select 15 names at random and inform the persons selected, by email, that they are in contention to serve as a neutral arbitrator or umpire of the parties' dispute. AIRROC will attach the *Arbitrator/Mediator Referral & Disclosure Form* (Form 3A) to its email and request each prospective arbitrator to complete and return Part II (*Availability & Disclosure Statement*) by email within one week (AIRROC shall have no responsibility to verify the accuracy or completeness of the disclosures received). After identifying the timely submitted responses of prospective arbitrators indicating an availability to serve, AIRROC will notify the parties simultaneously of the candidates remaining in contention and provide copies of such candidates' completed statements and resumes.
- B. Next, not later than one week after the above notification from AIRROC, the parties will simultaneously exchange their respective choices of just over half of the remaining names as acceptable arbitrator/umpire candidates. For example, if 11 of the original 15 candidates remain in contention, each party will select six names. This process will result in at least one match among the parties' selections. If there is just one match, that person shall be the arbitrator/umpire. If there is more than one match, the parties will notify AIRROC's Executive Director, and AIRROC will have the arbitrator /umpire chosen by lot from the parties' matched selections.
- C. Notwithstanding the commencement of the arbitrator/umpire selection process described in this section, the parties are free to agree on the arbitrator or umpire at any time before its completion (where AIRROC is continuing to play a role in administration, the parties should inform AIRROC of any such agreement as soon as possible). The parties should proceed with arbitration as provided below.
- D. No party shall have *ex parte* communications with any prospective arbitrator during the selection process described herein.

IV. Procedural Rules for Arbitration

- A. **Organizational Meeting:** Not later than 21 days after the arbitrator or the umpire, in the case of a three-member panel, is notified of his or her selection, the parties and the arbitrator or panel will conduct an organizational conference by video or telephone conference, unless the parties agree to an adjournment or agree to a meeting in person. At the organizational meeting the arbitrator or panel will make further disclosures to the parties as appropriate. Unless there is a clear, fundamental conflict precluding an arbitrator's engagement, the parties will indicate their acceptance of the arbitrator or panel. The parties will further describe the issues in dispute to the arbitrator/panel and a schedule for all activities in the proceeding will be established. The schedule will be enforced absent the parties' agreement to change it or the occurrence of exigent and unanticipated circumstances to be determined at the arbitrator/panel's discretion.
- B. **Discovery:** There shall be no discovery or any motions or applications for discovery, unless the parties agree otherwise. However, nothing shall preclude the arbitrator or panel, *sua sponte*, from requiring production of specified documents that they consider necessary to properly resolve the dispute.
- C. **Preliminary Relief:** There shall be no motions or applications for preliminary relief, unless the parties agree otherwise.
- D. **Hearing:** The dispute shall be submitted to the arbitrator or panel on briefs and documentary evidence only (*i.e.*, no live witness testimony), unless the parties agree otherwise. Oral argument or presentations on the briefs and documents submitted may be directed by the arbitrator or panel at their discretion, or when requested jointly by the parties. The duration of any argument or presentations, together with any live witness testimony agreed to by the parties (all of which shall be referred to collectively as the "Hearing"), shall not exceed one day, unless the parties agree otherwise, or the arbitrator or panel considers additional oral presentations or additional live witness testimony necessary to properly resolve the dispute.
- E. **Affidavits:** The arbitrator or panel are authorized to determine whether affidavits will be permitted and, if so, the rules to be followed as to such affidavits regarding their subject matter, scope, timing, rebuttal, etc.
- F. **Award:** The arbitrator or panel shall render a written award not later than 30 days after the submission of briefs or conclusion of the Hearing, if any. Such award will set forth the disposition of the claims(s) and any counterclaim(s) asserted, and the relief granted, if any. However, the arbitrator or panel will not issue a "reasoned" award, unless the parties agree otherwise.
- G. **Communications:** No party shall at any time from the commencement of the arbitrator selection process have *ex parte* communications with the arbitrators concerning any aspect of the proceeding.

- H. **Arbitrator Fees:** If proceeding with one arbitrator, the arbitrator shall charge an hourly rate to be agreed between the parties, which will be apportioned equally among the parties. If proceeding with a three-member panel, each party will bear the cost of its party-appointed arbitrator and equally share the cost of the umpire.
- I. **AIRROC Service Fee:** Regardless of whether AIRROC administers arbitrator selection, AIRROC will not charge member companies any service fee to use the Procedure. If a member company has a dispute with a non-member company(ies) and the parties agree to use AIRROC to administer arbitrator or umpire selection, AIRROC will charge the non-member company(ies) a total service fee of \$1,000. If none of the companies in a dispute is an AIRROC member but the non-members agree to use AIRROC to administer arbitrator or umpire selection, AIRROC will charge the non-members a total service fee of \$2,000. Any fee due shall be paid in full to AIRROC simultaneously with the submission of documents described in Section II.C. AIRROC shall have no obligation to refund payment under any circumstances (*e.g.*, even if settlement occurs or the parties agree on the arbitrator without AIRROC having rendered service).

V. Confidentiality

- A. Unless the parties agree otherwise in writing, the parties and arbitrator(s) (including all prospective arbitrators) agree to maintain the confidentiality of all papers, communications, statements, submissions, materials, processes, orders, and awards (“Information”) in connection with the arbitration. Confidentiality of the Information will remain in effect after conclusion of the arbitration. Disclosure of any Information may be made only to the extent necessary:
- (i) to enforce, confirm, vacate, or modify an order or award of the arbitrator(s).
 - (ii) in communications with auditors retained by a party or with regulatory authorities or their agents.
 - (iii) to seek recovery from retrocessionaires regarding the subject matter of the arbitration;
or
 - (iv) to comply with lawful subpoenas or orders of any court or other arbitration panel.
- B. The parties will make good faith efforts to limit the extent of any disclosure of the Information and will cooperate with each other in resisting or limiting disclosure to the extent reasonable and appropriate.

VI. Hold Harmless and Indemnification

- A. The parties agree that they shall not assert any claim, file any suit, or initiate any action of any kind against the arbitrator(s) or AIRROC concerning any matter arising from an arbitration conducted under the Procedure. Each party further agrees jointly and severally to release, protect, defend, indemnify, and hold harmless the arbitrator(s), AIRROC, and its officers, principals, directors, employees, agents, representatives, and affiliates from and against any and all claims, liabilities, judgments, losses, damages, demands, causes of action, attorney's fees, expert fees, expenses, and the like, in law or in equity, directly or indirectly arising from an arbitration conducted under the Procedure, including for any alleged non-performance of services. Each party further agrees jointly and severally to reimburse the arbitrator and AIRROC for all reasonable expenses (including attorney's fees) as they are incurred in connection with the investigation of, preparation for, or defense against any pending or threatened claim arising from an arbitration conducted under the Procedure.
- B. Any arbitrator involved in this process agrees not to assert any claim, file any suit, or initiate any action of any kind against AIRROC or its officers, principals, directors, employees, agents, representatives, and affiliates concerning any matter arising from the Procedure or an arbitration thereunder, including any derivative claim for a suit or action brought against the arbitrator or any claim by the arbitrator to collect unpaid fees.
- C. Paragraphs A and B are non-cancelable and of unlimited duration.
- D. Nothing in this section shall abridge any right that a party may have with respect to another party to seek to enforce, confirm, vacate, or modify any order or award that the arbitrator may render, or any right of the arbitrator to collect fees due from a party.

VII. Absence of Precedential or Preclusive Effect

Unless they agree otherwise in writing, the parties stipulate that any arbitration conducted under the Procedure is solely for the purpose of resolving the specific dispute or disputes that the parties have designated as constituting the subject matter of the arbitration; and, to the fullest extent permitted by law, it is further stipulated that any award or ruling will not be subject to collateral estoppel or *res judicata* or have any other precedential or preclusive effect beyond the strict confines of the subject matter.

VIII. Confirmation and Enforcement

The parties agree that the award of the arbitrator/panel will be fully binding concerning any matter submitted for arbitration and that the award can be confirmed by any court of competent jurisdiction. Any petition to confirm or vacate the award will be filed under seal to the extent permitted by the court. Notwithstanding the above, no party shall seek to confirm a monetary award that has been paid in full.

AIRROC Mediation Process

I. Mediator List

A. The AIRROC Arbitrator/Mediator List can be found on the AIRROC website under the “Dispute Resolution” dropdown menu². (To search for mediators on the list, use the “mediator” as one of your search parameters). The information provided about each Mediator on these lists includes the following:

- link to a full resume of the mediator,
- number of years of insurance industry experience,
- number of years handling run-off matters,
- whether they are an ARIAS certified mediator (with link to ARIAS profile)
- number of mediations involving insurance industry matters,
- current rates, and whether the mediator requires a retainer for these matters,
- AIRROC experience (attendance at events, participation in Digital Content communications, participation in training seminars, etc.),
- date information on the chart was last updated.

B. Notwithstanding the above, AIRROC relies on the information provided by applicants and makes no representations whatsoever regarding the accuracy or completeness thereof.

C. Commencing January 1, 2023, all listed Mediators are responsible to update their information on the website every year or whenever necessary to accurately reflect their experience and qualifications. As part of that process, mediators will be asked to state how many times in the last calendar year he/she was appointed as a Mediator pursuant to these Procedures.

D. AIRROC reserves the right at any time to: (1) approve or disapprove a candidate’s application for inclusion on the List; (2) remove a mediator’s name from the List; or (3) amend the criteria for inclusion (including retroactive application to persons who qualified under previous criteria).

E. Before accepting any appointment, Mediators must indicate their willingness to comply with the time parameters specified in the Procedure or any specified by the parties.

² The List of Arbitrators/Mediators can be found here:
https://airroc.memberclicks.net/index.php?option=com_community&view=search&searchId=95649

II. Mediation Proceeding

- A. To initiate use of the Procedure, the parties must jointly complete an *Initiation of Arbitration/Mediation Proceedings Form* (“IOP”) (Form 1). The IOP requires the parties to identify the contract or contracts at issue in the mediation; to stipulate to the claim(s) and any counterclaim(s) to be mediated; and to state the principal amount sought in respect of each claim and any counterclaim to the extent possible. In agreeing to be bound by the Procedure, the parties stipulate that the mediation will be strictly limited to the subject matter identified in the IOP, absent their written agreement to an extension or change, or their voluntary agreement to expand the scope to facilitate settlement at any time during the mediation process.
- B. At the outset, parties are encouraged to discuss their respective views and expectations on significant issues, including: (1) the substantive issues in dispute; (2) contemplated need for an informal exchange of documents necessary to facilitate the mediation; (3) whether any party expects to have in-house or outside counsel attend the mediation; and (4) need for, length, and form of any mediation statements with exhibits and confidential settlement information to be exchanged or sent solely to the mediator before the mediation session.
- C. To initiate the AIRROC-administered mediator selection process described in Section III of the Procedure, the parties must jointly submit to AIRROC’s Executive Director: (1) the completed IOP; and (2) an *Arbitrator/Mediator Referral & Disclosure Form* (Form 3A) with Part I completed. (Part II of the latter form is for prospective mediators to complete and shall be left blank by the parties). Mediator selection will proceed in accordance with Section III of the Procedure.
- D. Alternatively, the parties are encouraged to agree on the mediator without AIRROC’s involvement. An alternative MRD Form designed to help the parties to select a mediator by consent is attached as Form 3B. Any communications with a prospective mediator regarding selection pursuant to this Section II shall occur jointly; no individual ex parte communications with any prospective mediator are allowed prior to mediation selection pursuant to this Section.
- E. The parties shall send the completed IOP to the mediator no later than the time of his or her selection.

III. Mediator Selection Administered by AIRROC

- A. AIRROC is available to assist in mediator selection when requested by the parties. After receiving the IOP and the *Arbitrator/Mediator Referral & Disclosure Form* (Form 3A) submitted by the parties (see Section II.C.), AIRROC will select five names at random and inform the persons selected, by email, that they are in contention to serve as a mediator of the parties’ dispute. AIRROC will attach the *Arbitrator/Mediator Referral & Disclosure Form* (Form 3A) to its email and ask each prospective mediator to complete and return

Part II (*Availability & Disclosure Statement*) by email within one week (AIRROC shall have no responsibility to verify the accuracy or completeness of the disclosures received). After identifying the timely-submitted responses of prospective mediators indicating availability to serve, AIRROC will notify the parties simultaneously of the candidates remaining in contention and provide copies of such candidates' completed statements and resumes.

- B. Next, not later than one week after the above notification from AIRROC, the parties will simultaneously exchange their respective choices of just over half of the remaining names as acceptable mediator candidates. For example, if all five of the original five candidates remain in contention, each party will select three names. This process will result in at least one match among the parties' selections. If there is just one match, that person shall be the mediator. If there is more than one match, the parties will notify AIRROC's Executive Director, and AIRROC will have the mediator chosen by lot from the parties' matched selections.
- C. Notwithstanding the commencement of the mediator selection process described in this section, the parties are free to agree on the mediator at any time before its completion (where AIRROC continues to play a role in administration, the parties should inform AIRROC of any such agreement as soon as possible). The parties should proceed with mediation as provided below.
- D. No party shall have ex parte communications with any prospective mediator during the selection process described herein.

IV. Mediation Procedure

- A. Agreement: No later than seven days before the Initial Organizational Conference call the mediator shall send the parties a written mediation agreement, setting forth the terms and conditions of their retention of the mediator.
- B. Initial Organizational Conference Call: Not later than 21 days after the mediator is notified of his or her selection, the parties and mediator will conduct an Initial Organizational Conference by telephone, unless the parties agree to postpone/reschedule the call or meet in person. At the conference, the mediator will make further disclosures to the parties as appropriate. Unless there is a clear, fundamental conflict precluding the mediator's engagement, the parties will indicate their acceptance of the mediator. The parties will further describe the factual background and salient issues to the mediator, and work with the mediator and each other to establish a schedule for all activities, including deadlines for any informal exchange of documents, preparation and submission of mediation statements/exhibits to the mediator and other side, preparation and submission of a confidential settlement statement to the mediator alone, and date/time/location of the mediation session. The schedule will be followed absent the parties' agreement to change it or the occurrence of exigent and unanticipated circumstances to be determined at the discretion of the mediator.

- C. Document Exchange: During the Initial Organizational Call the mediator will work with the parties to establish a deadline for their informal exchange of documents necessary to conduct the mediation. Additionally, nothing shall preclude the mediator, sua sponte, from asking the parties to produce specified documents that the mediator considers necessary for the proper resolution of the dispute.
- D. Presentation of Issues: The dispute shall be submitted to the mediator in mediation statements and exhibits and a confidential settlement statement, the latter provided to the mediator only and setting forth the history and endpoint of any prior settlement negotiations, the reason(s) why the negotiations failed, any creative ideas each party might have to resolve the dispute and their own range or ideas of acceptable settlement values, unless the parties agree otherwise. Opening statements or presentations on the statements and documents submitted may be directed by the mediator in his or her discretion, or when requested jointly by the parties. The duration of any presentations shall not exceed 30 minutes per side, unless the parties agree otherwise.
- E. Communications: Following the mediator's selection, both parties shall be allowed *ex parte* communications with the mediator concerning any aspect of the proceeding, including caucuses at the mediation session, at the discretion of the mediator. Offers and counteroffers must be reduced to writing to be held by the mediator until the end of the mediation. Once the mediation has concluded, the mediator shall destroy any offers and/or counteroffers in his or her possession.
- F. Mediator Fees: Each party shall bear an equal share of the mediator's reasonable expenses. All fees of the mediator will be paid directly to the mediator.
- G. AIRROC Service Fee: Regardless of whether AIRROC administers mediator selection, AIRROC will not charge any member companies a service fee to use the Procedure. If a member company has a dispute with a non-member company(ies) and the parties agree to use AIRROC to administer mediator selection, AIRROC will charge the non-member company(ies) a total service fee of \$1,000. If none of the companies in a dispute is a member of AIRROC but the non-members agree to use AIRROC to administer mediator selection, AIRROC will charge the non-members a total service fee of \$2,000. Any fee due shall be paid in full to AIRROC simultaneously with the submission of documents described in Section II.C. AIRROC shall have no obligation to refund payment under any circumstances (e.g., even if settlement occurs or the parties agree on the mediator without AIRROC having rendered service).

V. Confidentiality

- A. Unless the parties agree otherwise in writing, the parties and mediator (including all prospective mediators) agree to maintain the confidentiality of all papers, communications, statements, submissions, materials, and processes, ("Information") in connection with the mediation. Confidentiality of the Information will remain in effect after conclusion of the mediation. Disclosure of any Information may be made only to the

extent necessary:

- (i) to enforce, confirm, vacate, or modify an agreement of the parties.
 - (ii) in communications with auditors, consultants or third-party administrators retained by a party or with regulatory authorities or their agents.
 - (iii) to seek recovery from reinsurers or retrocessionaires regarding the subject matter of the mediation; or
 - (iv) to comply with lawful subpoenas or orders of any court or arbitration panel.
- B. The parties will make good faith efforts to limit the extent of any disclosure of the Information and will cooperate with each other in resisting or limiting disclosure to the extent reasonable and appropriate.

VI. Hold Harmless and Indemnification

- A. The parties agree that they shall not assert any claim, file any suit, or initiate any action of any kind against the mediator or AIRROC concerning any matter arising from a mediation under the Procedure. Each party further agrees jointly and severally to release, protect, defend, indemnify, and hold harmless the mediator, AIRROC, and its officers, principals, directors, employees, agents, representatives, and affiliates from and against any and all claims, liabilities, judgments, losses, damages, demands, causes of action, attorney's fees, expert fees, expenses, and the like, in law or in equity, directly or indirectly arising from a mediation under the Procedure, including for any alleged non-performance of services. Each party further agrees jointly and severally to reimburse the mediator and AIRROC for all reasonable expenses (including attorney's fees) as they are incurred in connection with the investigation of, preparation for, or defense against any pending or threatened claim arising from a mediation under the Procedure.
- B. The mediator agrees not to assert any claim, file any suit, or initiate any action of any kind against AIRROC or its officers, principals, directors, employees, agents, representatives, and affiliates concerning any matter arising from the Procedure or a mediation there under, including any derivative claim for a suit or action brought against the mediator or any claim by the mediator to collect unpaid fees.
- C. Paragraphs A and B are non-cancellable and of unlimited duration.
- E. Nothing in this section shall abridge any right that a party may have with respect to another party to seek to enforce, confirm, vacate, or modify any agreement of the parties, or any right of the mediator to collect fees due from a party.

VIII. Absence of Precedential or Preclusive Effect

- A. Unless they agree otherwise in writing, the parties stipulate that any mediation conducted under the Procedure is solely for the purpose of resolving the specific dispute or disputes that the parties have designated as constituting the subject matter of the mediation.
- B. To the fullest extent permitted by law, it is further stipulated that any agreement will not be subject to collateral estoppel or res judicata or have any other precedential or preclusive effect beyond the strict confines of the subject matter.