

FRANARB, INC.
dba FRANCHISE ARBITRATION AND MEDIATION SERVICES (“FAM”)

MEDIATION GUIDELINES

Amended and Effective April 29, 2011

Since 1988, FranArb, Inc., doing business as Franchise Arbitration and Mediation Services ("FAM"), has specialized in arbitration and mediation referral services in the resolution of disputes between franchisors and franchisees. FAM's address is 650 Town Center Drive, Suite 1400, Costa Mesa, California 92626-7020. FAM's telephone number is (949) 854-0374 and its fax number is (949) 856-3245. FAM's website is www.franarb.com. FAM's e-mail address is info@franarb.com. FAM's Administrator is Brandi Newell, who may be reached via e-mail at brandi@franarb.com.

Recognizing the unique consensual nature of the franchise relationship, and desiring to promote the continuation of the franchise relationship whenever feasible, FAM encourages mediation as an initial method of dispute resolution before submission of the dispute to binding arbitration or other form of binding resolution. Mediation is also recommended as an initial resort to resolve disputes because of the relevant requirements to disclose certain matters in an disclosure document, including in some instances material arbitration proceedings, and because mediation is very useful as a settlement technique.

The following guidelines provide a standardized method for processing a mediation involving FAM. Although FAM-referred mediators (neutrals) have a wide degree of latitude in conducting proceedings, they may not charge more than \$500 per hour for their services and must conduct themselves in a professional manner at all times. Every FAM mediator must be impartial and independent and must perform his or her duties diligently and in good faith.

Commencement of Mediation

A mediation that is referred to FAM pursuant to a clause in the Franchise Agreement that requires mediation between the parties will be commenced with the filing of a Demand for Mediation. If there is no such clause in the Franchise Agreement, but the parties nevertheless wish to mediate the dispute before a FAM-referred mediator, an appropriate *Submission Agreement* must be completed and signed by the parties (this form may be downloaded in an Adobe PDF fill-in format at <http://www.franarb.com/forms.aspx>) and forwarded to FAM by mail or overnight courier.

Administrative Fee and Billing Procedures

FAM receives a one-time and non-refundable administrative fee of \$1,000 to coordinate the mediation and process the mediator referral. Services provided by a FAM appointed mediator are billed **at a rate not to exceed \$500 per hour**, in hourly increments (nearest .10 or .25 hour) as quoted by FAM to the disputing parties, plus costs.

FAM does not provide or offer case management services by its employees. All FAM appointed mediators are directly compensated for their mediation services at their FAM hourly rate by the disputing parties (and not FAM) under a written fee agreement or engagement agreement prepared by the mediator (FAM will supply a sample fee agreement to an appointed mediator upon request, but FAM does not prepare fee agreements nor negotiate retainers). The appointed mediator's engagement agreement with the disputing parties may include a reasonable retainer at his or her FAM hourly rate. A copy of the engagement agreement is to be provided to FAM as soon as practicable after it is signed by the parties. FAM does not collect any retainers or other fees or costs payable to the mediator. This is the sole responsibility of the selected mediator.

As soon as the mediation is concluded, the mediator will send the disputing parties an itemized statement of fees and costs (and include either a refund check or an invoice requesting additional payment).

Confidentiality

The mediation proceedings are private and confidential, and the FAM appointed mediator may not reveal details, negotiations, terms or conditions of the proceedings or any resulting settlement agreement to any third party nor use information disclosed in the proceedings for any purpose other than the conduct of that proceeding without the express consent of all parties to the mediation or a valid directive or order from a government agency or court of competent jurisdiction. The parties and their legal counsel may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

Representation

Any disputing party may participate without representation (*pro se*), or by any representative of that party's choosing, or by legal counsel, unless such choice is prohibited by applicable law. A party intending to have representation must notify the other party and FAM of the name, telephone number, street address and e-mail address of the representative.

Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes before a mediator referred by FAM, the parties and their representatives, unless agreed otherwise in writing, will be deemed to have made these Guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate FAM as the coordinator of their mediation. By mutual agreement, the disputing parties may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via video conference, teleconference or other electronic or technical means.

Mediator's Qualifications

When the matter has been properly referred to FAM for resolution, inquiry will be made of all FAM recommended mediators each of whom must (i) have not less than 10 years of experience as a professionally trained mediator, franchise attorney (preferably having represented or counseled both franchisors and franchisees), or franchising executive, (ii) be located within a three hour commute of the general vicinity of the site designated for the mediation, and (iii) be reasonably available and eligible (no conflict of interest) to conduct the proceeding within the time frames set out in these Guidelines.

Provisional Appointment of Mediator

Nominated mediators receiving an availability and eligibility inquiry must carefully review the nature of the matter and the identity of the parties in order to determine that there are no conflicts of interest. The name of a potential mediator who has indicated to FAM that he or she is eligible to serve as a FAM-referred mediator in the particular matter and is willing to have his or her name referred will be provisionally appointed as Mediator and his or her identity will be sent by FAM to the parties in dispute.

Objection to Provisionally Appointed Mediator

The disputing parties will have 7 days after being notified of his or her identity to object to the mediator provisionally appointed by FAM. If no objection is received within 7 days, the appointment of the mediator will be made final and the mediator will thereafter be solely responsible for the conduct of the mediation proceeding. If one or both of the disputing parties objects to the provisionally appointed mediator, they must provide FAM with a written basis for their objection (this written basis is only to be submitted to FAM directly and not to the other disputing party or its counsel when submitting information to FAM). If FAM reasonably determines that there is a valid reason for the objection, an alternative mediator will be provisionally appointed by FAM. This process will be repeated until a mutually

acceptable mediator is selected. If a disputing party has no valid basis to object to a provisionally appointed mediator, it may nevertheless exercise a one-time peremptory challenge and removal of the provisionally appointed mediator, upon (i) written notice to FAM and the other disputing party of its election to do so and (ii) payment to FAM of a non-refundable administrative fee of \$750 to screen and process a replacement mediator.

Final Appointment of Mediator

As soon as the appointment of the mediator is made final, the mediator will be promptly notified by FAM of his or her selection and will be forwarded all related information then in the possession of FAM, including a copy of the Demand for Mediation (or Submission Agreement) and related correspondence. At the same time, the parties in dispute will also be notified of confirmation of the mediator's final appointment.

Replacement of Mediator Due to Death or Incapacity

A mediator must be replaced upon (i) his or her death or incapacity to continue, (ii) his or her resignation as mediator, (iii) upon the finding by a court of competent jurisdiction that the mediator is biased or has a financial or personal interest in the result of the mediation, or (iv) upon the request of all of the parties in dispute.

Mediator's Initial Telephone Conference

As soon as practicable after final appointment, the selected mediator will make telephone contact with the disputants to make arrangements for the mediation and collect a reasonable retainer from the disputants at the mediator's billable rate ($\frac{1}{2}$ from each party or if there are multiple parties, then $\frac{1}{2}$ from each side). FAM recommends the initial retainer be sufficient to cover preliminary matters, review of briefs and other documents, and one day of mediation. If the mediation is more complex than anticipated or extends for more than one day, the mediator may request additional pre-payments from the parties in dispute. When these preliminary matters have been completed, the mediator will set the date for the mediation and carefully review any documents submitted by the parties prior to the mediation. It is useful but not mandatory for parties to submit written mediation briefs or position statements prior to the mediation.

Initial Mediation Proceeding

The mediation process is straightforward and informal. An initial meeting of the disputing parties and, if applicable, their counsel is held in a conference room, with each party having the opportunity to present his or her view of the matters in issue. The mediator will introduce himself or herself and explain the process of mediation. Unless the disputing parties agree otherwise (and at their cost), there will be no reporters present to record proceedings and no stenographic record of the proceedings. Accordingly, the mediator must keep his or her own notes respecting the proceedings.

Mediation Process

Immediately after the initial meeting of the disputants, the parties are separated and placed in different rooms. Then, the mediator confers separately with each party, narrowing the issues and attempting to arrive at a mutually acceptable resolution of each issue. Although considerable discretion in the conduct of the mediation process rests with the mediator, FAM recommends that no more than 8 hours be allotted to a mediation session unless significant progress is being made, but all decisions on timing are the mediator's and the disputing parties' to make. If no significant progress is being made after 8 hours of alternative caucusing, the mediator will bring the parties together, review the progress that has been accomplished and reschedule a follow-up meeting not earlier than the next business day. If and when all issues have been significantly agreed to, the parties will be brought together again in the conference room and the agreements would be summarized. The parties may then sign a settlement agreement or make other arrangements to implement the agreed dispute resolution.

Termination of Mediation Proceedings

The mediation will be terminated upon the earlier to occur of the following:

- (i) By the execution of a settlement agreement by the parties;
- (ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute;
- (iii) By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of a mediation conference.

At the conclusion of the mediation (even if unsuccessful), a brief written summary of the resolution of the issues will be sent to the parties.

Exclusion of Liability

Neither FAM nor any FAM-appointed mediator is a necessary party in judicial proceedings relating to the mediation. Neither FAM nor any FAM-appointed mediator will be liable to any party for any error, act or omission in connection with any mediation conducted under these Guidelines. Parties to a mediation proceeding conducted under these Guidelines may not call the mediator, FAM or any FAM employee as a witness in litigation or any other proceeding relating to the mediation. The mediator, FAM and FAM employees are not competent to testify as witnesses in any such proceeding.

Furthermore, by submitting the dispute to resolution by mediation conducted under these Guidelines before the mediator nominated and appointed by FAM after opportunity for input from the parties in dispute, said parties in dispute are deemed to have consented that neither the mediator nor FAM are or will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any mediation under these Guidelines.

Alternative Supervised Settlement Negotiations

Parties in dispute may also desire to use the services of a mediator in connection with supervised settlement negotiations. This would involve the mediator serving as a moderator in an open debate between the disputants in a conference room. The process is similar to mediation, with the exception that the parties are not separated during negotiations. Supervised settlement negotiations are recommended only in instances where the disputes are relatively minor or as an initial prelude to mediation, in order that the disputed issues can be more adequately framed for the mediator.