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MEDIATION RULES

1. Introduction and Applicability:

- 1.1. These Rules shall be referred to as the Mediation Rules of the Asian Centre for International Arbitration and Mediation (“ACIAM Mediation Rules”) and is hereafter referred to as such or as “These Rules”.
- 1.2. These Rules shall come into force on _____.
- 1.3. These Rules comprise the Rules and the Schedules as are from time to time amended by the ACIAM. Unless the parties agree otherwise, the version of the Rules that shall apply in a mediation shall be the version in force on the date the request for mediation is made by a party.
- 1.4. If there is a conflict between these Rules and a law that applies in respect of a mediation, these Rules shall apply except to the extent that they conflict with any provision of law that cannot be varied or excluded by agreement.
- 1.5. ACIAM may from time-to-time issue practice notes and guidelines to supplement, regulate and implement these Rules.
- 1.6. References to “ACIAM” are to the Governing Council of ACIAM or any other body or person designated by it (including the Registrar) to perform the functions referred to herein. The functions of the Registrar shall be performed under the supervision of the Governing Council by the Registrar or any Deputy Registrar.
- 1.7. References to “communication” mean delivery, transmission or notification of a written communication by hand, registered post, courier service, facsimile, email or other means of telecommunication that provides a record of transmission.
- 1.8. All communications to the ACIAM from any party, authorized representative of a party shall be addressed to the Registrar, and shall also be copied to all other parties, save for information covered.
- 1.9. Any written communication shall be deemed to have been received if it is delivered: (i) to the addressee personally or to its authorized representative; (ii) to the addressee’s habitual residence, place of business or designated address; (iii) to any address agreed by the parties; (iv) according to the practice of the parties in prior dealings; (v) sent to the email address provided by the parties to the IAMC for purposes of correspondence or communications; or (vi) if, after reasonable efforts, none of these can be found, then at the

addressee's last-known residence or place of business.

2. Definitions:

2.1. In these Rules the following expressions shall have the meaning ascribed to them:

- a. "*Governing Council*" shall mean the Governing Council of ACIAM and includes a sub-committee of the Governing Council.
- b. "ACIAM" or "*the Centre*" means the Asian Centre for International Arbitration and Mediation.
- c. "*Mediation*", whether referred to as mediation, conciliation or an expression of similar import, means a voluntary process, in which a third party, namely, a mediator, facilitates communication between the parties and assists them in reaching an agreement for resolution of their disputes. The mediator neither adjudicates nor records any finding and does not have the authority to impose on the parties any view or decision or solution suggested by her.
- d. "*Mediator*" means a person registered as a mediator on the Panel of Mediators of the Centre or a person appointed or agreed to by the parties to conduct the mediation. Where the parties agree to the appointment of more than one mediator for a mediation, a reference to a mediator under these Rules shall mean a reference to all the mediators so appointed.
- e. "*Participant*" means any person other than the parties to the mediation and the mediator, who may be present at the request of one or all parties.
- f. "*Party*" means persons who are parties to the disputes, and includes persons whose agreement is necessary for the resolution of the disputes in mediation.
- g. "*Registrar*" means the Registrar of the ACIAM and includes any Deputy Registrar.
- h. "*Secretariat*" means the Secretariat of the ACIAM.

2.2. Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

3. Application:

3.1. These Rules shall apply to mediations administered by the Centre.

3.2. Parties to a dispute may agree to resolve their disputes by mediation under an agreement in writing executed prior to the disputes arising, or after the disputes have arisen between

them, in each case referred to in these Rules as ‘an agreement to mediate’.

3.3.A party or parties may submit a request for mediation under these Rules pursuant to an agreement to mediate, whether or not such agreement provides for mediation under these Rules.

3.4.Even in the absence of an agreement to mediate, a party may submit a request for mediation under these Rules.

3.5.A court, tribunal or other judicial or statutory authority may refer a dispute for mediation to the Centre.

3.6.Where a request for mediation is made by one, some, or all the parties to an agreement to mediate, such request shall contain the following particulars:

- a. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses of all the parties to the dispute including the parties making the request for mediation; and,
- b. a brief statement describing the nature and circumstances of the dispute and the value of the subject matter in dispute;

Such request shall be accompanied by (a) copy of the agreement to mediate; (b) proof of payment of the requisite filing fee; and (c) proof of service of the mediation request on the other party/ies to the dispute.

3.7.Where a request for mediation is made by a party in the absence of an agreement to mediate, it shall contain the particulars mentioned in Rule 3.6 and shall be accompanied by proof of payment of the requisite filing fee and proof of service of the mediation request on the other party/ies to the dispute.

3.8.Upon receipt of a request for mediation of disputes under these Rules, including on a reference under Rule 3.5, the Centre shall register such request/ reference, and issue notice to all the parties of the registration of such request/ reference. This notice shall set a date and invite all the parties to attend an initial meeting before the Centre. At this meeting, the Centre shall inform the parties about the process of mediation and assist them on the actions to be taken for the appointment of a mediator and the scheduling of further mediation sessions following such appointment. In the case of a reference under Rule 3.5, the notice shall also request the parties to pay in equal parts the applicable filing fee, and to provide in writing the information set out in Rule 3.6 above.

3.9.If the request for mediation under these Rules is made by a party: (a) in the absence of an

agreement to mediate; or (b) in the absence of an agreement to mediate the disputes under these Rules, the Centre shall, together with the notice send a copy of these Rules, and invite the other party or parties to attend an initial session of mediation before the Centre in accordance with these Rules.

3.10. The party/ies to whom a notice is issued under Rule 3.9 (in a case where there is no agreement to mediate), may decline to participate in the initial mediation session, or opt out of the mediation process, after the initial mediation session.

3.11. The Centre shall, following a request for mediation under these Rules, provide guidance and assistance to the parties with respect to the mediation process, the role of the mediator in a mediation and the benefits of resolution through mediation. The Centre shall also assist the parties in entering into an agreement to mediate where one does not exist prior to the request made by a party to the Centre for mediation.

4. Appointment of Mediator:

4.1. The parties may choose a mediator from the panel of mediators maintained by the Centre, if they have not already agreed upon a mediator.

4.2. The parties may request a change of the mediator from the Centre's panel of mediators, within 3 days following the initial mediation session under Rule 3.9. In that event, the parties may decide upon a mediator from the panel of mediators maintained by the Centre, if they have not otherwise agreed upon a mediator.

4.3. Where the parties are unable to agree upon a mediator within a period of three weeks from the date of request for mediation under Rule 3 above, the Centre shall nominate a mediator from its panel of mediators.

4.4. In nominating a mediator, the Centre shall consider such person's language, skills, qualifications and expertise, in relation to the nature of the disputes.

4.5. When a person is nominated as a mediator, that person shall make such enquiry as may be reasonably necessary, and disclose in writing any circumstances or potential circumstances, that may constitute a conflict of interest or is likely to give rise to justifiable doubts as to the person's independence or neutrality. The person nominated as mediator shall also confirm her ability to provide the time necessary for mediation of the disputes.

4.6. From the time of appointment and during the mediation proceeding, the mediator shall, without delay, disclose to the parties in writing any circumstances or potential

circumstances present, or that newly arises, that may constitute a conflict of interest.

4.7. On the basis of a disclosure under Rules 4.6 above: (a) the mediator may withdraw from the mediation by writing to this effect; or (b) any party may request withdrawal of the nomination, and for nomination of another mediator from the panel of mediators of the Centre, upon which the provisions of Rules 4.1, and 4.3 to 4.6 shall apply.

4.8. If the parties request for more than one mediator to act as mediators, the Centre shall appoint such mediators.

5. Commencement of Mediation:

5.1. The mediation shall commence on the date when a request for mediation is made to the Centre under these Rules by a party, under an agreement to mediate. The mediation shall commence, in all other cases, on the date of the first mediation session.

6. Conduct of Mediation:

6.1. The mediator shall conduct the mediation in accordance with Part III of the Arbitration and Conciliation Act, 1996 if applicable, or under any other applicable law, and in accordance with the terms of reference, if any, made at the time of a reference to mediation under Rule 3.5.

6.2. In the absence of an agreement between the parties on these aspects, the mediator, in consultation with the parties and based on their convenience, may organize the mediation sessions at the Centre, or other physical venue, or online, or in a hybrid mode with the sessions being conducted physically as well as online, or with some parties and the mediator present physically and others joining online.

6.3. The mediator shall facilitate communications, discussions and negotiations between the parties, to enable them to understand the issues and reach a settlement of their disputes.

6.4. A settlement at mediation is voluntary and the parties alone are responsible for taking decisions on the settlement in the mediation.

6.5. Upon commencement of the mediation, parties shall not approach any court or competent authority with respect to the issues forming the subject matter of the mediation, except for the purposes of obtaining any interim orders or measures that may be necessary to secure, protect or preserve the rights of one or more of the parties.

6.6. The mediator shall not act as an arbitrator, judicial authority, representative or counsel of

a party in any subsequent arbitration or judicial proceedings in respect of the disputes mediated by her.

6.7. The mediator may, with the consent of all the parties and at their cost, obtain the advice or assistance of any experts on any matter in issue in the disputes.

6.8. The mediator may invite as a party to the mediation, any person who is interested in any or all of the issues in relation to the disputes or in its settlement, with consent of all parties and of the new party concerned.

6.9. The mediator may meet with the parties in both joint and separate sessions. Separate sessions with one or some of the parties may be scheduled by the mediator if requested by the parties, or when considered necessary by the mediator.

6.10. The place of the mediation shall be as designated by the parties in the agreement to mediate. In the absence of a place being indicated in the agreement to mediate, the parties may agree in writing to the place of the mediation, failing which the place of the mediation shall be Hyderabad, India

7. Confidentiality:

7.1. Unless permitted by the parties and the mediator, no person other than the parties, their representatives, their advisors, and the mediator may attend the mediation.

7.2. There shall be no transcript or formal recording of the mediation, save for (i) a record of the conduct of mediation sessions and the persons participating in such sessions, and (ii) record of any settlement agreement.

7.3. Save as provided under any law governing the parties or the mediation, each of the mediator, the parties, participants in the mediation, and the Centre and its officers who are responsible for the management of the mediation process, shall keep confidential the following matters relating to the mediation proceedings:

- a. acknowledgements, disclosures, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;
- b. acceptance of or willingness to accept proposals made or exchanged in the mediation;
- c. documents prepared solely for the purpose of the mediation;
- d. an invitation by a party to mediate, a party's willingness or refusal to mediate a dispute; and
- e. any settlement agreement arrived at in mediation unless disclosure is required

pursuant to any law or in order to enforce the rights of one or more of the parties.

7.4. When a party or participant in the mediation gives any information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other parties and the participants.

8. Admissibility; Privilege against Disclosure; Discovery:

8.1. Subject to any law for the time being in force, no party or participant in the mediation shall in any proceedings before a court, tribunal or other authority, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iv) of Rule 7.3 above, or call upon the mediator, participants, including experts and advisors engaged for the purpose of the mediation, and the Centre and its officers involved in the administration of the mediation, to disclose such information.

Provided that evidence or information that is otherwise admissible or subject to discovery in proceedings shall not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

8.2. The Centre may compile or disclose general information concerning matters that have gone to mediation, for research, reporting or training purposes. Such information shall not identify parties or the specific disputes in the mediation.

9. Termination of Mediation:

9.1. The mediation proceeding shall be terminated:

- a. upon the execution of a written agreement by the parties;
- b. by the mediator communicating in writing to the parties that the mediation has been terminated;
- c. by any party or parties to the mediation in writing, addressed to the Centre, the other party/parties and the mediator, withdrawing from the mediation;
- d. by the Centre in writing to the parties that the mediation has been terminated for the reason that a payment by one or more parties pursuant to the Rules has not been made for more than 15 days after the due date for payment; or,
- e. in a reference to mediation made in a pending arbitration or judicial proceeding, on the expiry of the period specified (or extended) by the arbitral tribunal, court or judicial authority.

10. Settlement Agreement:

- 10.1. A settlement agreement following mediation under these Rules arrived at between the parties shall be recorded in writing and signed by the parties to such settlement, by following the procedure laid down in section 73 of the Arbitration and Conciliation Act, 1996. Such a settlement agreement will have the status and effect stated in section 74 of the said Act. Where the mediation is in pursuance of a reference by a court, tribunal or judicial authority, the settlement will be submitted to the referring authority, and will be subject to the decision of such authority.
- 10.2. A settlement agreement may be recorded in the form of an electronic record and be signed by electronic signatures.
- 10.3. It shall be the responsibility of parties to the settlement agreement to stamp and/or register any settlement agreement and otherwise comply with applicable law as may be necessary to give effect to the settlement agreement.
- 10.4. Where any settlement agreement has been reached, the mediator shall promptly notify the Centre of the same and provide the Centre with a copy of such agreement for its record.
- 10.5. The Centre may at the request of one or all of the parties authenticate or attest the settlement agreement as one arising from mediation administered under these Rules by the Centre.

11. Fees and Costs:

- 11.1. The requesting party/parties shall deposit with the Centre, a sum calculated and demanded by the Secretariat of the Centre including:
- 11.2. Any other expenditure incurred by the respective parties in respect of the mediation shall remain the responsibility of that party, unless otherwise agreed by the parties.
- 11.3. All costs of the mediation, including the fees of the mediator and the fees and expenses of the Centre shall be borne equally by the parties unless otherwise directed by a judicial authority or arbitral tribunal, or agreed by all the parties.

12. Indemnity:

- 12.1. The mediators, any expert appointed to assist the mediation, the ACIAM and its

employees, the Registrar and its members and any staff retained by the ACIAM shall not be liable to any party howsoever for any act or omission in connection with any mediation save: (i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; (ii) where, in the case of the mediator, there is egregious breach of any terms of the Code of Conduct for Mediators (enumerated in the First Schedule) on the part of such mediator; or (iii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

13. Jurisdiction:

- 13.1. Notwithstanding anything, where objections to the jurisdiction of the Centre have been raised, the Centre may bifurcate the proceedings in its discretion and expeditiously decide the objections to its jurisdiction.
- 13.2. The Centre shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, termination or validity of the mediation agreement. For this purpose, a mediation agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Centre that the contract is null and void shall not result ipso jure in the invalidity of the mediation agreement.