

MEDIATION RULES

INCLUDING IIAM MEDIATORS' CODE OF
PROFESSIONAL CONDUCT & IIAM MEDIATORS'
CONDUCT ASSESSMENT PROCESS,
ADOPTED BASED ON APCAM & IMI GUIDELINES



INDIAN INSTITUTE OF
ARBITRATION & MEDIATION

www.arbitrationindia.org

FOREWORD

IIAM Mediation / Conciliation is based on the Mediation Rules published by the Indian Institute of Arbitration & Mediation (“IIAM”), which is intended to help parties and mediators to take maximum advantage of the flexible procedures available in mediation for the resolution of disputes amicably, quickly and economically. IIAM Mediation Rules shall apply to mediation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by an agreement to mediate, they have agreed that the IIAM Rules shall apply. IIAM Mediation Rules shall also apply for transactional-mediation, deal-mediation or assisted deal-making, where parties use mediation to help them to conclude deals. Where the parties seek to resolve any international dispute under the IIAM Mediation Rules, they are deemed to have agreed to resolve such disputes as per the Mediation Rules of the Asia-Pacific Centre for Arbitration & Mediation (“APCAM”).

The Rules allow the procedure to be as short, professional, expedient and as inexpensive as practicable. The costs and expenses of mediation shall be governed by the Fee Schedule of the IIAM Mediation Rules.

IIAM Mediators’ Code of Professional Conduct and IIAM Mediators’ Conduct Assessment Process, which are adopted based on APCAM guidelines are also part of this Rule Book.

Recommended clauses for mediation, dispute management, forms to be used and the guide to the Rules are also given.

Further information about IIAM Services, Rules and Procedures can be found in the IIAM website.

The Rules applicable for mediation / conciliation shall be the IIAM Mediation Rules made effective as on the date of commencement of mediation and shall be accessed at the IIAM website at https://www.arbitrationindia.com/pdf/rules_mediation.pdf

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IIAM MEDIATION RULES

(Revised w.e.f 15 May 2021)

(INCLUDING IIAM MEDIATORS' CODE OF PROFESSIONAL CONDUCT
AND IIAM MEDIATORS' CONDUCT ASSESSMENT PROCESS
ADOPTED BASED ON APCAM GUIDELINES)



International Mediation Institute

IIAM MEDIATION RULES, 2021

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PART-I

IIAM MEDIATION RULES

(As revised w.e.f. 15 May 2021)

Rule 1

Scope and application

- (a) Where any agreement, submission or reference provides for mediation or conciliation by Indian Institute of Arbitration & Mediation (“IIAM”) or under the Mediation Rules of the Indian Institute of Arbitration & Mediation (“IIAM Mediation Rules”), the parties shall be taken to have agreed that the mediation or conciliation shall be conducted in accordance with the following Rules, or such amended Rules or affiliated Rules as IIAM may have adopted to take effect before the commencement of mediation. The Rules are subject to such modifications as the parties may agree in writing at any time.
- (b) These Rules shall apply to the mediation of present or future disputes where the parties seek amicable settlement of such disputes, or for transactional-mediation, deal-mediation, or assisted deal-making, where parties agree to use mediation to help them to conclude deals, under the IIAM Mediation Rules.
- (c) These Rules shall also apply to mediation initiated under the Arb-Med-Arb procedure, where mediation is commenced on a referral by an arbitral tribunal, under the IIAM Arbitration Rules.
- (d) These Rules shall also apply to mediation initiated under the Peacegate Application, the digital platform of IIAM, either through a Mediation Centre or by Online mediation.

- (e) In the case of international or cross-border disputes or deal-making, the parties shall resolve the disputes or conduct assisted deal-making under the Mediation Rules of the Asia-Pacific Centre for Arbitration & Mediation (“APCAM Mediation Rules”), which shall be in force at the time of commencement of mediation.

Rule 2

Definitions

In this Rules, unless the context otherwise requires —

- (a) “Administrator” means the IIAM official assigned under these Rules who shall perform all the functions to be done by IIAM as required under these Rules.
- (b) “Agreement to Mediate” means an agreement in writing executed by the parties and the mediator, to mediate any dispute or conduct assisted deal-making, specifying the appointment of mediator, role and obligation of parties and mediator and the mediation process.
- (c) “Affiliated Mediation Centre” or “AMC” means a Mediation Centre affiliated with IIAM for conducting mediation under the provisions of these Rules.
- (d) “AMA Procedure” means a hybrid procedure of Arbitration-Mediation-Arbitration Procedure under the IIAM Arbitration Rules, where a party submits disputes for resolution for arbitration under the IIAM “Arb-Med-Arb Clause” or “AMA Clause”.
- (e) “Approved Mediation Access Point” or “AMAP” means a space where there is an accredited mediator available for conducting mediation under the provisions of these Rules.
- (f) “Code of Conduct” means the Code of Conduct for Professional Mediation Practice to be observed by a Mediator as under these Rules.
- (g) “Conciliation” means a process of mediation carried out, whereby parties agree to give the MSA the status of a settlement agreement executed as under section 73 of the Arbitration & Conciliation Act, 1996.
- (h) “Conduct Assessment” means the Mediator’s Conduct Assessment based on a complaint received against a mediator, as described under these Rules.
- (i) “Deal-mediation”, “Transactional-mediation” or “Assisted deal-making”, means a process, whereby parties attempt to make or conclude deals with

the assistance of a third person or persons (“the mediator”) lacking the authority to impose any suggestion to the parties, but facilitates to conclude the deal.

- (j) “Digital Administrator” or “ODR Administrator” means the entity that carries out such administration and coordination of an online negotiation, mediation or ODR in the digital platform of Peacegate, or such other digital platform.
- (k) “Domestic mediation” means mediation of any dispute which is considered civil, community, relationship, contractual or commercial in nature or any disputes arising out of offences which are compoundable in nature, between parties in India, or any assisted deal-making between parties in India.
- (l) “Hotline Hub” means a chat-platform consisting of the parties to the contract and the Project Mediator in the Peacegate App, when the parties choose Project mediation.
- (m) “IIAM” means Indian Institute of Arbitration & Mediation.
- (n) “IIAM Chapter” means a full-fledged centre of the Indian Institute of Arbitration and Mediation.
- (o) “IIAM Mediation Fee schedule” means the fee schedule of IIAM applicable as on the date of submission of mediation under these Rules.
- (p) “International mediation” or “Cross-border mediation” means mediation of a dispute which is considered as commercial under the law in force in India, or any assisted deal-making and where at least one of the parties is —
 - (i) An individual who is a national of, or habitually resident in, any country other than India; or
 - (ii) A body corporate which is incorporated or has its place of business in any country other than India; or
 - (iii) An association or a body of individuals whose central management and control is exercised in any country other than India.
- (q) “Mediated Settlement Agreement” or “MSA”, in relation to a mediation, means an agreement in writing reached by some or all of the parties to mediation, settling the whole or part of the dispute, or finalising the terms of the deal and signed by the parties and the mediator.

An MSA is “in writing” if its content is recorded in any form. The requirement that it should be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

- (r) “Mediation” means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute.
- (s) “Mediation Communication” means anything said or done or any document or report prepared or any information provided, for the purposes of or in the course of mediation, and includes an agreement to mediate or a mediated settlement agreement.

Communication includes electronic, online or digital communication.

- (t) “Mediation Session” means a meeting arranged as under these Rules, between the mediator and one or more of the parties to the dispute or parties to deal-making, and includes any activity undertaken to arrange or prepare for such a meeting, whether or not the meeting takes place; and includes any follow up on any matter or issue raised in such a meeting.

Meeting includes a meeting conducted by electronic communication, video conferencing or other electronic means.

Mediation session may include “General” session which shall include all the parties and the mediator and “Private” or “Caucus” session, which shall include the mediator and any one party or group of parties.

- (u) “Mediator” means an individual who is appointed to mediate and to assist the parties in dispute to reach a mutually acceptable agreement to resolve the dispute or for assisted deal-making.

Where more than one mediator is appointed for a mediation, a reference to a mediator under these Rules is a reference to all the mediators for the mediation.

- (v) “Non-Party” means a person who participates in mediation, other than a party or mediator, and includes counsels/ consultants/ advisers for each party, experts in the subject matter of the dispute or deal, secretary/IIAM staff or any third party who attend mediation proceedings.
- (w) “Online Dispute Resolution” or “ODR” means a mechanism for resolving disputes through the use of electronic or digital platform and other information

and communication technology, without the need for physical presence at a meeting or hearing and could also have hybrid processes comprising both online and offline elements, which could comprise of negotiation, mediation, arbitration.

- (x) “Online Mediation” means mediation initiated and/or conducted as an ODR mechanism, conducted using the electronic platform of Peacegate or such other platforms as agreed by the parties.
- (y) “Online meeting” or “Virtual meeting” means a meeting arranged as under these Rules, between the mediator and one or more of the parties for conducting mediation by audio-conference, video-conference, or other similar means of communication.
- (z) “Party to a Mediation” means any party to the whole or part of a dispute that is referred for mediation, or participate in deal-making, but does not include any mediator conducting the mediation.

Party may include multiple parties, which includes initiating parties as well as opposite parties.

“Initiating party” means the party who initiate the process of mediation under these Rules.

“Opposite party” means the party against whom mediation is initiated under these Rules.

- (aa) “Peacegate App” means an exclusive and unique ADR-ERP software and digital platform of IIAM which provides facility to conduct negotiation, mediation and arbitration, through Centre or online, which can used in web platform from www.peacegate.in and can also be used as App in Apple iOS and Android instruments.
- (bb) “PMC” means People’s Mediation Centre established under the IIAM Community Mediation Service, by IIAM and People’s Mediation Society (“PMS”), along with other organizations or institutions.
- (cc) “Project-mediation”, means a dispute management process where the parties appoint a mediator in a contract, so as to resolve disputes during the pendency of the contract as more specifically described in section 5.
- (dd) “Registrar” means the IIAM official assigned under these Rules who shall perform all the functions to be done by IIAM, as delegated by the Administrator.

Section 1
Domestic Mediation

Rule 3
Initiation of Mediation Process

- (a) If a dispute arises, a party may request the initiation of mediation (“initiating party”) by delivering a written invitation for mediation to the other party (“opposite party”). Such invitation for mediation shall contain a brief self-explanatory statement of the nature of the dispute, the quantum of dispute, if any, the relief or remedy sought and nominating a mediator or mediators thought suitable.
- (b) The opposite party who receives an invitation for mediation shall notify the initiating party and IIAM within 15 days after receipt of the invitation whether (s)he is willing for mediation and whether any mediator nominated is acceptable. Failure by any party to reply within 15 days shall be treated as a refusal to mediate. On receipt of reply, the initiating party shall file the Mediation Submission Form to IIAM.
- (c) Notwithstanding anything contained in Rule 3(a), a party to a dispute or all parties to the dispute jointly, may request the initiation of mediation by submitting a Request for Mediation to IIAM.
- (d) On receipt of the Request for Mediation, IIAM shall send an invitation to mediate to the opposite party mentioning the mediation request and the scheduled date, time and venue of the 1st session of mediation. The invitation shall also mention the details of the nominated mediator. The party who receives the invitation for mediation can either attend the mediation session

as per the invitation before the mediator, or can notify his/her inability to attend on the scheduled date or express his/her objection to the nominated mediator, so that IIAM can nominate another mediator or reschedule the 1st session based on the convenience of the parties and the mediator. If any of the parties intimate their refusal to mediate or if one or all the parties fail to appear on the scheduled date, it shall be treated as a refusal to mediate.

- (e) In case the mediation is initiated based on Arb-Med-Arb procedure, IIAM shall send an invitation to the Parties to attend the 1st session of mediation, mentioning the name of the Mediator or Mediators as the case may be and the date, time and venue of the 1st session. The parties can either attend the mediation session as per the invitation before the mediator, or can notify their inability to attend on the scheduled date or express their objection to the nominated mediator, so that IIAM can nominate another mediator or reschedule the 1st session based on the convenience of the parties and the mediator. If any of the parties intimate their refusal to mediate or if one or all the parties fail to appear on the scheduled date, it shall be treated as a refusal to mediate.
- (f) In case the initiating party has initiated online mediation by submitting the Request for Mediation, IIAM shall send an online invitation to the Parties to attend the 1st session of mediation, mentioning the name of the Mediator or Mediators as the case may be and intimating the details of online platform and the date and time of the 1st session. The parties can either attend the mediation session as per the invitation in the online platform, or can notify their inability to attend on the scheduled date and time or express their objection to the nominated mediator, so that IIAM can nominate another mediator or reschedule the 1st session based on the convenience of the parties and the mediator. If any of the parties intimate their refusal to mediate or if one or all the parties fail to attend on the scheduled date and time, it shall be treated as a refusal to mediate.
- (g) In case of mediation initiated through the Peacegate Application, the Request for Mediation, Invitation to Mediate and such other communications by the parties, mediator(s) or IIAM shall be through the App itself, by way of notifications, emails or SMS messages.
- (h) In case of deal-mediation, the parties can jointly initiate mediation, by submitting the Request for Mediation. If the parties have not nominated the mediator, IIAM shall nominate the mediator and shall send an invitation to the Parties to attend the 1st session of mediation, mentioning the name of the Mediator or Mediators as the case may be and intimating the details of

the 1st session. The parties can either attend the mediation session as per the invitation, or notify their inability to attend on the scheduled date and time or express their objection to the nominated mediator, so that IIAM can nominate another mediator or reschedule the session based on the convenience of the parties and the mediator.

Rule 4

Appointment of Mediator

- (a) When the initiating Party submits the Request for Mediation, (s)he can nominate a mediator from the panel of IIAM accredited mediators.
- (b) If the initiating Party does not nominate a mediator or if the opposite party object to the nomination of the mediator or if the parties fail to agree on the appointment of a mediator, IIAM shall appoint a mediator who is prepared to serve.
- (c) There shall be one mediator, unless the parties agree to appoint co-mediators, which shall be two or more as the parties may decide. In case of multiple mediators, each party is free to appoint one mediator each. If the parties do not nominate the mediators or if the parties so request, IIAM shall appoint such mediators who are prepared to serve. If there are multiple mediators, the mediators shall suggest one among them to coordinate the procedural activities with the parties, failing which IIAM shall propose the said mediator from among the appointed mediators.
- (d) The appointment of mediator by IIAM under this Rule shall be deemed to be made on the agreement of parties as per Sec. 64(2) of the Arbitration & Conciliation Act, 1996.
- (e) No person shall act as mediator in any dispute in which that person has any financial or personal interest in the result of the mediation except by consent of the parties. Before accepting an appointment, the proposed mediator shall disclose to the parties or to IIAM, any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. If any disclosure is made, IIAM shall immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 2 days, (s)he shall not be appointed. The substituted mediator shall be appointed in the same manner as the mediator, who is replaced.
- (f) Where the parties agree on mediation and agree on the mediator and the proposed mediator is willing to serve, they shall execute an Agreement to Mediate. The mediation shall then proceed in accordance with these Rules.

Rule 5
Mediation Process

- (a) Upon appointment of mediator, IIAM shall work with the parties to establish the time and location of each mediation session.
- (b) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- (c) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely —
 - (i) The mediator shall fix, in consultation with the parties, the time schedule, the dates and the time of each mediation session, where all parties have to be present.
 - (ii) The mediator shall hold the mediation at IIAM Chapters, Affiliated Mediation Centres (“AMC”), Approved Mediation Access Points (“AMAP”), People’s Mediation Centres (“PMC”) or any other convenient location agreeable to him/her and the parties, as (s)he may determine.
 - (iii) The mediator may conduct joint or separate meetings with the parties.
 - (iv) The parties or their counsels/ consultants/ advisers shall, if so required, before the commencement of mediation, provide to the mediator and IIAM, a pre-mediation submission (“Position Statement” or “Briefing Paper”) setting forth the issues, which according to them, needs to be resolved, or deals to be made and its position in respect of those issues and all information reasonably required for the mediator to understand the issues; such memoranda shall also be mutually exchanged between the parties.
 - (v) Before the commencement of mediation, based on the request of the counsels/ consultants/ advisers of the parties or if so required by the mediator, the mediator shall convene a pre-mediation conference with the counsels/ consultants/ advisers, so as to have a preliminary discussion about the process and procedure of mediation.
 - (vi) During the mediation process, each party shall furnish to the mediator such other information as may be required by him/her in connection with the issues to be resolved or addressed.

- (vii) In case, the parties agree or if the mediator finds that the physical meeting of the parties are not possible due to any constraints, the mediator can in consultation with IIAM, arrange for virtual meeting of the parties, which shall be considered as mediation session.
- (viii) If the parties have initiated online mediation through Peacegate Application, the mediator and the parties shall conduct the mediation session online, either through digital chatrooms or through video chatrooms.

Rule 6

Time frame for Mediation

The mediator shall use his/her best endeavours to conclude the mediation within 60 days of his/her appointment. The appointment shall not extend beyond a period of three months without the written consent of all parties.

Rule 7

Role of Mediator

- (a) The mediator may conduct the mediation in such manner, as (s)he considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute or for an effective deal making.
- (b) The mediator is not bound by the law of procedure or Evidence Act.
- (c) The mediator shall be guided by the principles of fairness and justice and shall be bound by the IIAM Mediators' Professional Code of Conduct.
- (d) The mediator may with the consent of parties, obtain the service of experts, who can assist the mediator or the parties in helping to resolve the dispute or understanding the subject matter of the dispute or deal. The expert shall enter into a confidentiality agreement while participating in the mediation process. The parties shall bear the expenses incurred for obtaining such service.
- (e) The mediator shall disclose the substance of all information concerning the dispute or deal which (s)he receives from one party, to the other party and the other party shall be given opportunity to present explanations.

Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.

Provided further that, when such information which has been disclosed as confidential relates to such information, revealing or relating to —

- (i) the attempt to commit any physical or psychological threat or injury to a party; or
- (ii) the commission of a crime, including an attempt to commit a crime,

the mediator may inform the party giving such information that (s)he is not bound by confidentiality and ascertain whether such information is genuine. The mediator may weigh the gravity of such information and decide whether (s)he needs to disclose the information to the opposite side or not, or whether (s)he need to withdraw from mediation.

- (f) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of settlement and generating options in an attempt to resolve the dispute, emphasizing that it is the responsibility of the parties to take decision which affect them; and that (s)he shall not impose any terms of settlement on the parties.
- (g) In the case of deal-mediation, the mediator shall attempt to facilitate voluntary discussion by the parties, and communicate with each party assisting them in clarifying priorities, reducing misunderstandings, exploring areas of mutual benefits and generating options in an attempt to make the deal, emphasizing that it is the responsibility of the parties to take decision which affect them; and that (s)he shall not impose any terms on the parties.
- (h) After each session of mediation, the Mediator shall submit a Mediation Record Form, indicating the duration of the mediation session and result of the session to IIAM. This shall be signed by the mediator and IIAM in case of institutional mediation and by the mediator and the parties in case of ad-hoc mediation.
- (i) Subject to the confidentiality of mediation, the mediator may withdraw from mediation at any time during mediation by notice in writing given to the parties stating the mediator's general reasons for the withdrawal.

Provided, the withdrawal by the mediator from mediation shall not by itself prevent the mediator from again becoming the mediator in that mediation.

Rule 8

Role of Parties

- (a) The mediator may communicate with the parties together in general sessions or with parties separately in caucus or private sessions, and each party shall co-operate with the mediator. The parties shall give full assistance to enable the mediation to proceed and be concluded within the time stipulated.

The term “Parties” may include their respective counsels/ consultants/ advisers.

- (b) The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes or make a deal and does not give any warranty that the mediation will result in a settlement or deal.

- (c) Each party may at his/her/its own initiative or at the invitation of the mediator, give suggestions for settlement of the dispute or for making the deal and the outcome of the mediation shall be determined by the mutual agreement of the parties and the mediator shall not make proposals or impose any decisions to the parties to resolve the dispute or make any deal.

Provided, the mediator, at the request of all the parties, may at his/her sole discretion, consider to make evaluative suggestions or proposals, but it shall be for the parties to determine whether to accept such suggestions or proposals.

- (d) While no one can be compelled to commit to resolve the case or make a deal in mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes or make a deal. Participation in mediation shall be voluntary at all times.

- (e) A party may —

(i) withdraw from the mediation at any time during the mediation,

(ii) be accompanied to the mediation, and assisted by, a person (including a counsel, consultant or adviser) who is not a party, or

(iii) obtain independent legal advice at any time during the mediation.

- (f) A party or parties may terminate the appointment of a mediator for any reason and shall inform the mediator the reason for the termination and appoint another mediator or request IIAM to appoint another mediator.

Rule 9

Role of IIAM

- (a) IIAM shall make the necessary arrangements for mediation, including —
 - (i) Appointing the Mediator;
 - (ii) Organizing a venue and assigning a date for mediation;
 - (iii) Organizing an exchange of the pre-mediation submission or any such submissions, if any; and
 - (iv) Providing general administrative support, including giving online support.
- (b) IIAM, together with the Mediator, shall assist in drawing up the Mediated Settlement Agreement, if necessary.

Rule 10

Representation & Non-Parties

- (a) The parties may be represented or assisted by persons of their choice. Each party shall notify in advance the names and the role of such persons to IIAM and the other party. Each party shall have full authority to settle the matter or make a deal, before the mediator. The parties shall confer upon their representatives the necessary authority to settle the dispute or to make the deal.
- (b) If any of the parties are not able to be present personally, they can be represented through their authorised persons or power of attorney holders.
- (c) Counsels/ consultants/ advisers for each party or experts in the subject matter or any third party who can assist the process can attend mediation proceedings, if allowed by the mediator and with the consent of the parties. Such Non-parties shall sign a declaration of confidentiality.
- (d) If any of the party is assisted by a counsel/ consultant/ adviser, the other party shall also be entitled to such assistance by a counsel/ consultant/ adviser.
- (e) The names, addresses, mobile phone numbers and emails of all parties to the dispute or deal, and those who will represent them, should be furnished to IIAM and exchanged between the parties.

Rule 11

Privacy, Confidentiality & Voluntariness

- (a) Mediation is a private, confidential and voluntary process. The parties may withdraw from the mediation at any time by informing the Mediator and all other parties without being required to give any justification for doing so.
- (b) No third-party shall be allowed to attend the mediation sessions without the due consent of the parties and the mediator.

Explanation — For the avoidance of any doubt, it is clarified that if the Mediator wishes, (s)he could take the assistance of a secretary or IIAM staff, designated by him/her, for clerical assistance, provided such person also signs a declaration of confidentiality.

- (c) Every document, communication or information disclosed, or produced by any party for the purpose of or related to the mediation process shall be disclosed on a privileged and without prejudice basis and no privilege or confidentiality shall be waived by such disclosure. Confidentiality also extends to the Mediated Settlement Agreement except where its disclosure is necessary for implementation or enforcement.

Provided the confidentiality shall not apply to the proviso in Rule 7(e).

- (d) Mediation proceedings are assisted negotiations, and all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any litigation or arbitration of any dispute. However, evidence that is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation session.
- (e) The Mediation shall be conducted in confidence, and no transcript or formal record shall be made. No audio-visual recording shall be made of the proceedings. Only the Mediator, the parties and/or their representatives and advisers and secretary/IIAM staff as required shall be permitted to be present during mediation.
- (f) Nothing that transpire during the course of 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 arbitration, adjudication or litigation.
- (g) Parties shall maintain confidentiality in respect of the events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to —

- (i) Views expressed by a party in the course of mediation proceedings.
- (ii) Documents obtained during mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators.
- (iii) Proposals made or views expressed by the mediator.
- (iv) Admission made by a party in the course of mediation proceedings.
- (v) The fact that a party had or had not indicated willingness to accept a proposal.

Rule 12
Settlement

- (a) When the mediator finds that there exist elements of settlement, (s)he shall formulate the terms of a possible settlement and submit to the parties for their observations. After receiving their observations, the terms may be reformulated by the mediator.
- (b) If the parties reach agreement on the settlement terms, the mediator with the assistance of IIAM, may draw up a Mediated Settlement Agreement (“MSA”) on the terms agreed by the parties and the parties may sign the MSA. The mediator shall authenticate the agreement and furnish a copy to each party.
- (c) When the parties sign the MSA, it shall be final and binding on the parties and persons claiming under them.
- (d) While formulating the settlement, the parties request the mediator that they would like to give finality and enforceability for the MSA, the parties agree that the mediation process shall be considered as conciliation, and agree to give the MSA the status of a settlement agreement executed as under section 73 of the Arbitration & Conciliation Act, 1996, and thereby having the same status as that of an arbitral award and can be executed and enforced as a decree of a court.
- (e) In the case of Arb-Med-Arb procedure, where a dispute is fully or partially resolved, the same shall be reduced to writing and signed by the parties, which shall be submitted to IIAM and IIAM shall forward the same to the Arbitral Tribunal along with the Mediation Status Report.

- (f) In the case of court-referred mediation, where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties. If any counsels have represented the parties, they shall attest the signature of their respective clients. The agreement of the parties so signed and attested, shall be submitted to the mediator who shall, with a covering letter, forward the same to the Court in which the suit is pending. Where no agreement is arrived at between the parties, before the prescribed time limit or where, the mediator is of the view that no settlement is possible, (s)he shall report the same to the said Court in writing.
- (g) In the case of deal-mediation, where the parties have finally decided on the terms of the deal, whether entirely or partially, the same shall be reduced to writing and signed by the parties. The mediator shall authenticate the MSA and furnish a copy to each party.

Rule 13

Termination of Mediation

- (a) The mediation process shall come to end —
 - (i) Upon the signing of MSA by the parties or;
 - (ii) Upon the written advice of the mediator after consultation with the parties that in the mediator's opinion further attempts at mediation are no longer justified or;
 - (iii) Upon written notification by any party at any time to the mediator and the other parties that the mediation is terminated.

Provided, if a party does not respond to the invitation of the other party, mediator or IIAM or does not attend the mediation session without any information and does not respond to any clarifying query raised by the other party, mediator or IIAM, it shall be deemed to be a notification by the party that the mediation is terminated.

- (b) On completion of mediation, the mediator shall submit a Completion Report to IIAM.
- (c) After receipt of Completion Report, IIAM may issue a Mediation Status Report to the parties, if they so request, intimating the final status of the process.

Mediation Status Report can be given even if the dispute was not resolved or the mediation could not be held due to the absence of the opposite Party.

In case the mediation could not be commenced due to non-appearance of all or some of the opposite parties, IIAM may issue a Mediation Non-starter Certificate to the parties who appeared, if they so request, intimating the final status of the process.

- (d) In case of mediation under the Arb-Med-Arb procedure, IIAM shall send the Mediation Status Report to the Arbitral Tribunal. If the parties have fully or partially resolved the dispute, a copy of the settlement agreement shall also be forwarded to the Arbitral Tribunal.

Rule 14

Costs

- (a) Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of mediation or of any subsequent arbitral or judicial proceedings. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs, including —
 - (i) The mediator's fees and expenses;
 - (ii) Expenses for any expert advice or opinion requested by the mediator with the consent of the parties; and
 - (iii) The IIAM administrative costs in support of mediation.
- (b) The Mediator fee shall be fixed by IIAM in accordance with the IIAM Mediation Fee Schedule, unless the mediator and the parties have agreed on a different engagement term at the time of appointment.
- (c) The administrative costs of mediation shall be fixed by IIAM in accordance with the IIAM Mediation Fee Schedule.
- (d) The payment schedule and deposits as per IIAM Mediation Fee Schedule shall be complied by the parties and on default, IIAM may suspend the mediation process until such deposit is made.
- (e) Any surplus funds deposited shall be returned to the parties at the conclusion of mediation.
- (f) Each party shall be liable for the payment of charges or fees to their respective counsels/ consultants/ advisers.

Rule 15
Feedback

Unless inappropriate in the circumstances, Mediators shall, at the conclusion of mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete a Feedback Form, given in Schedule-2 and/or Evaluation Form, given in Schedule-3 and send the same to the Reviewer or IIAM.

Rule 16
Mediator's Role in Subsequent Proceedings

The parties undertake that the mediator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of dispute covered under mediation or any other dispute in connection with the same contract. No party shall be entitled to call the mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

Rule 17
Not Legal Counsel or Expert

- (a) All parties recognize that at the mediation session(s) and at every other point of the proceedings —
- (i) Neither IIAM nor the mediator shall be acting as a legal adviser or legal representative for any of the parties.
 - (ii) Neither IIAM nor the mediator has a duty to assert, analyse or protect any party's legal rights or obligations, including lien rights, statutes of limitation, or any other time limit or claim requirement.
 - (iii) Neither IIAM nor the mediator has a duty to make an independent expert analysis of the situation, raise issues not raised by the parties or determine that additional necessary parties should participate in mediation.
 - (iv) Neither IIAM nor any mediator can guarantee that a mediation session will result in a settlement or deal.
- (b) Parties may be represented by a counsel/ consultant/ adviser at any stage of the mediation process, and are encouraged to take legal advice concerning the proceedings or any proposed settlement agreements.

Rule 18
Exclusion of Liability

- (a) The parties jointly and severally release, discharge and indemnify the mediator and IIAM in respect of all liability whatsoever, whether involving

negligence or not, from any act or omission in connection with or arising out of or relating in any way to any mediation conducted under these Rules, save for the consequences of fraud, dishonesty or violation of IIAM Mediators' Professional Code of Conduct.

- (b) No mediator shall be summoned by any party to appear in a Court of law to testify in regard to information received or action taken or in respect of drafts or records prepared or shown to him/her during the mediation proceedings.

Rule 19
Action against the Mediator

If any of the parties feel that the mediator is guilty of violation of the IIAM Mediators' Professional Code of Conduct, they shall within a period of one month, initiate the IIAM Mediators' Conduct Assessment Process.

Rule 20
General Provisions

- (a) Under these Rules a decision to be taken by IIAM, shall be taken by the Administrator. The Administrator may, if required delegate such of its duties and functions to a Registrar and the Registrar may decide such issues so specifically authorized by the Administrator.
- (b) The interpretation of any provision in these Rules shall be made by IIAM.
- (c) The Fee structure under the Rules shall be the fee published by IIAM in the IIAM Mediation Fee Schedule as on the date of submission of mediation. The current fee schedule of IIAM, mentioned in Schedule-4, shall be notified by IIAM from time to time or published in its official web site.
- (d) Any of the above procedures may be altered by the Administrator, in his/her sole discretion, to fit the circumstances of a particular case. Any matter not specifically addressed by these rules, or any conflict or ambiguity in these rules, shall be decided by the Administrator. The Administrator, in his/her sole discretion, has authority to prepare forms, resolve procedural disputes, impose time limits on the parties, and otherwise require a party to take action or refrain from taking action.
- (e) IIAM shall have the power and authority to effectuate the purposes of these Rules, including establishing appropriate rules, procedures, guidelines and advisories governing mediation and altering, amending or modifying these Rules in accordance with the law.

Section 2
International Mediation

Rule 21

Scope

- (a) Where any agreement, submission or reference provides for mediation or conciliation by Indian Institute of Arbitration & Mediation (“IIAM”) or under the Mediation Rules of the Indian Institute of Arbitration & Mediation (“IIAM Mediation Rules”), and if such mediation arises on international or cross-border disputes, such international or cross-border disputes shall be conducted in accordance with the Mediation Rules of the Asia-Pacific Centre for Arbitration & Mediation (“APCAM Mediation Rules”), which shall be in force at the time of commencement of mediation.
- (b) Where any agreement, submission or reference provides for mediation by the Asia-Pacific Centre for Arbitration & Mediation (“APCAM”) or under the Mediation Rules of the Asia-Pacific Centre for Arbitration & Mediation (“APCAM Mediation Rules”), the parties shall be taken to have agreed that the mediation shall be conducted in accordance with the APCAM Mediation Rules, or such amended Rules as APCAM may have adopted to take effect before the commencement of mediation.
- (c) In case of Sub-rule, (a) and (b), the parties shall be taken to have agreed that the administration of mediation under the APCAM Mediation Rules, shall be conducted by IIAM, which shall be the APCAM Centre in India, if the venue of such mediation is in India.

Rule 22

Role of IIAM

- (a) IIAM shall be an APCAM Centre in India and a constituent member of APCAM, along with institutions from other countries.
- (b) As an APCAM Centre in India, IIAM shall make necessary arrangements for mediation, including —
 - (i) Administering international or cross-border mediation in India under the APCAM Mediation Rules.
 - (ii) Co-ordinating with the constituent members of APCAM in other countries for referring an international or cross-border mediation of a party from India in any such countries.
 - (iii) Providing general administrative support for APCAM.



Section 3 Online Mediation

Rule 23 Scope

- (a) Where any agreement, submission or reference provides for mediation or conciliation by IIAM or under IIAM Mediation Rules, a party can opt to conduct online mediation through digital platform, using Peacegate or such other platforms as agreed by the parties.
- (b) These Rules shall also apply to online mediation of present or future disputes where the parties seek amicable settlement of such disputes, under the IIAM Mediation Rules, or if they are covered under an ODR clause, where the parties have designated the IIAM Mediation/ Arbitration Rules.

Rule 24 Initiation of Online Mediation

- (a) The initiating party can commence online mediation by serving a request for mediation to the Digital Administrator, providing the details of the initiating party so as to confirm his/her identity and also the details of the opposite party, which shall include the mobile number and email address.
- (b) In the case of initiating a process under ODR, the initiating party can negotiate directly with the opposite party through the online platform and if the negotiation fails, can commence online mediation.
- (c) The parties can initiate online process from the beginning of the mediation process or at any stage of an offline mediation process and can also opt for processes comprising both online and offline elements.

- (d) The process for appointment of mediator and the process of mediation is subject to the same due process standards that apply to that process in an offline context, as under these Rules.

Rule 25

Online Security and Presumptions

- (a) The digital platform used for online mediation should ensure the following features and safety measures —
 - (i) Allow the parties to opt for textual communications – chat rooms, audio conferencing or video conferencing.
 - (ii) Allow the parties facilities for online waiting rooms, general discussion room and caucus rooms.
 - (iii) The entry to the rooms is restricted to registered parties only, with list of participants issued to all participating parties and password protected.
 - (iv) Ensure that communications are private and confidential and recording of any communication whatsoever, is not permitted.
- (b) During online mediation, if a party is not able to get connectivity or if loses connectivity or faces interruptions during the mediation session, all the parties and the mediator shall be notified of the said fact by the Digital Administrator and the mediator or the Digital Administrator shall notify the disconnected party through SMS or digital notification on registered mobile phones or in their registered email address and seek the clarification from such disconnected party.

Provided that if a party, without intimation, gets disconnected from an ongoing mediation session for fifteen continuous minutes or more, it shall be deemed as a connectivity issue.

- (c) In case of such disruption of connectivity, the mediation session shall be kept in abeyance till such party reconnects in the platform.
- (d) If a party has not attended the mediation session as per the Invitation to mediate or as per the subsequent schedules on the online platform, it shall

not prima-facie be considered as a refusal to mediate, but shall be presumed as a disruption or interruption in connectivity. The Mediator shall contact the non-appeared party through email, notification, telephone or any other recognized medium of communication and clarify the position. In case the party clarifies that (s)he is not interested to mediate or continue with mediation, or there is no response to such email, within a period of 3 days, it shall be considered as a refusal to mediate and the proceedings shall be terminated.

- (e) In online mediation, the parties and the mediator can make and sign the agreement to mediate and the MSA online, using the online platform, if the contents are recorded in an electronic format and the same is accessible so as to be useable for subsequent reference, and also securing the identity of the person signing the document.

Provided that once the signature has been affixed in the MSA, the system shall erase the signature from the online platform, so that it cannot be used again.



Section 4
Mediation under Arb-Med-Arb Procedure

Rule 26
Scope and Procedure

- (a) Once a party invokes an AMA Clause to initiate an Arb-Med-Arb Procedure as per Schedule-3 of the IIAM Arbitration Rules, the Emergency Arbitrator shall stay the arbitration and inform IIAM that the case be submitted for mediation. IIAM will initiate mediation and submit the case to mediation under these Rules.
- (b) The mediation shall be completed within 8 weeks from the Mediation Commencement Date, unless, IIAM considers it appropriate to extend the time.
- (c) On completion of mediation, the mediator shall submit a Completion Report to IIAM.
- (d) After receipt of Completion Report, IIAM shall issue a Mediation Status Report, as follows —
 - (i) If the dispute is not resolved by mediation, IIAM shall issue the Mediation Status Report informing the emergency arbitrator or the final arbitral tribunal, as the case may be, that the dispute could not be resolved by mediation, so that arbitration proceedings can be resumed.
 - (ii) If the dispute is resolved, either fully or partially, IIAM shall issue the Mediation Status Report informing the emergency arbitrator or the final arbitral tribunal, as the case may be, that a settlement has been reached, along with a copy of the settlement agreement.

Section 5 Project Mediation

Rule 27

Scope and Procedure

- (a) IIAM Dispute Prevention & Management (“DPM”) system provides for parties to opt for Dispute Management Clause (“DM clause”) in their project contracts, wherein the parties to the contract can jointly appoint a “Project Mediator”, whereby the parties would have the opportunity to work together, in a more collaborative and mutually beneficial environment and oversee that the contract proceeds smoothly.
- (b) The DM clause can be a stand-alone clause in the contract or part of a Dispute Resolution clause.
- (c) A Project Mediator is retained by contracting parties to call upon when the parties’ own discussions cannot resolve a particular dispute or difference or when the parties need to find a different perspective to an issue requiring a joint solution.
- (d) Once the parties include an IIAM DM clause in their contract, an exclusive hotline hub is created in the Peacegate App, with the parties to the contract and the Project Mediator.
- (e) The hotline hub will be available to the parties till the culmination of the contract and the parties and the mediator shall be logged-in in the Peacegate application during the said period.

Rule 28

Initiation of Mediation

- (a) Any party to a contract who would like to initiate the mediation process or the parties jointly, can submit the request for commencing mediation in the hotline hub, and notification and email will be issued to all parties and the project mediator.
- (b) The Digital Administrator shall immediately notify commencement of mediation and the mediator shall coordinate with the parties and schedule the mediation session. The mediator and the parties can decide whether the mediation has to be conducted online or offline.
- (c) The process of mediation is subject to the same due process standards that apply to that process under these Rules.
- (d) In case of non-resolution of a dispute referred under this process, the parties are free to invoke the regular dispute resolution process given in the contract, including emergency arbitration.

Rule 29

Emergency Mediation

- (a) Under the Project Mediation, a party or the parties jointly can also initiate emergency mediation, in case of exceptional urgency, to resolve a dispute.
- (b) When emergency mediation is initiated, the Digital Administrator and Mediator, shall strive to commence mediation as soon as possible at any rate within a period of 24 hours.
- (c) In the case of emergency mediation, the mediation shall be conducted online and shall opt for offline, only if all the parties decide to do so.
- (d) The mediator shall strive to complete the emergency mediation within a period of 7 days, but the parties are free to extent the time frame, if so required.

Rule 30

Status-quo during Project Mediation

When the parties invoke Project Mediation under these Rules, it is agreed by the parties that they shall not disrupt the services or contractual obligations under the contract and shall continue with the terms of the contract.

PART-II

IIAM MEDIATORS' CODE OF PROFESSIONAL CONDUCT

(As adopted based on the APCAM and IMI Code of Professional Conduct)

Trust underpins the mediation process. If the parties do not trust a mediator's integrity in terms of competence diligence, neutrality, independence, impartiality, fairness and the ability to respect confidences, mediation is unlikely to succeed.

The IIAM Mediators' Code of Professional Conduct ("the Code") provides users of mediation services with a concise statement of the ethical standards they can expect from Mediators who choose to adopt its terms and sets standards that they can be expected to meet.

Users who believe the standards established in this Code have not been met may prefer a complaint to IIAM on the Mediators' conduct Assessment.

The Mediators under the IIAM Panel, IIAM Community Mediation Service or under IIAM Accredited Mediation Providers are required to make known to users that the Code governs their professional mediation practice.

For the purposes of this Code, Mediation/Conciliation is defined as a process where two or more parties appoint a third-party neutral ("Mediator") to help them in a non-binding dialog to resolve a dispute and/or to conclude the terms of a deal or agreement.

1. MEDIATOR APPOINTMENT

(a) Promotion of Mediators' Services

Subject to applicable laws and to regulations governing professional practice, Mediators shall present and promote their practice in a truthful way. They may quote freely from, and link to, their Profile on the IIAM website or

Peacegate App and they are free to replicate that Profile, or extracts from it, for their own professional purposes.

(b) **Appointment**

Before the mediation begins, Mediators shall advise the parties (eg. by way of directing them to the Mediator's Profile on the IIAM website or Peacegate App, or in the mediation agreement) —

- ◆ About their relevant background and experience;
- ◆ About the code of conduct the Mediator will observe;
- ◆ About the process that will apply in the unlikely event of a party believing the Mediator has not met the standards of the stated code of conduct; and
- ◆ That at the end of the process they will be invited to offer written feedback on the process and on the Mediator's role.

2. **DILIGENCE, INDEPENDENCE, NEUTRALITY, IMPARTIALITY**

(a) **Diligence**

Mediators may accept an assignment to act as Mediator in any situation where they feel competent to serve in that capacity.

(b) **Independence, Neutrality and Impartiality**

- (i) Mediators shall not accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affect their independence neutrality or impartiality. This duty to disclose is a continuing obligation throughout the mediation process.
- (ii) The existence of circumstances potentially affecting, or appearing to affect, a Mediator's independence, neutrality or impartiality will not automatically imply unfitness to act as a mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.
- (iii) Mediators shall always act in an independent, neutral and impartial way. They shall act in an unbiased manner, treating all parties with

fairness, quality and respect. If at any time a Mediator feels unable to conduct the process in an independent, neutral and impartial manner, (s)he shall express that concern and shall offer to withdraw from the mediation. Such circumstances include —

- ◆ Financial or personal interests in the outcome of the mediation.
- ◆ Existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Mediator is aware.
- ◆ Other potential source of bias or prejudice concerning a person or institution which may affect that Mediator's independence, neutrality or impartiality or reasonably create an appearance of partiality or bias.

(c) **Conflicts of Interest**

- (i) Mediators shall conduct reasonable inquiries to determine if any interests, conflicts of interests or potential biases may exist. They shall have a continuing duty to disclose any interests, conflicts of interests or potential biases that may become apparent during the mediation process.
- (ii) Following any such disclosures, a Mediator shall decline to participate as a mediator in a particular case if any of the parties raises an objection, unless a contract or applicable law or Court order nevertheless requires the Mediator's participation. Even then, if a Mediator personally believes that the matters disclosed would inhibit their actual impartiality, the Mediator should withdraw as the mediator.
- (iii) After accepting appointment, and until the mediation process ends, Mediators shall not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to affect or might reasonably create the appearance of conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.
- (iv) Within 12 months following the end of a mediation, Mediators shall not represent in an advisory capacity any party to a mediation in the same or a substantially related matter, unless all parties to the

mediation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (eg. as a mediator or arbitrator) that may involve some or all of the parties will not be considered a representation in an advisory capacity for the purposes of this clause.

- (v) At no time following the end of a mediation shall Mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent.

3. **MEDIATION PROCESS**

(a) **Procedure**

Mediators shall satisfy themselves that the parties to the mediation and their advisers understand the characteristics of the mediation process, their roles as parties and advisers, and the role of a mediator. The Mediator shall ensure that before the mediation begins, the parties have understood and agreed the terms and conditions which will govern the mediation including those relating to obligations of confidentiality on the Mediator and on the parties. It is best practice for those terms to be contained in a written Agreement to Mediate unless the parties or the circumstances dictate otherwise.

(b) **Fairness and Integrity of the Process**

- (i) Mediators shall explain the mediation process to the parties and their advisers, and be satisfied that that they consent to the process being used and to the Mediator selected (unless applicable law, court rules or contract require use of a particular process and/or mediator). Mediators shall ensure that, if there are to be any pre-mediation private communications with the Mediator, all parties are aware they will have equal opportunity to raise issues.
- (ii) Mediators shall conduct the process with fairness to all parties and shall take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalising any resolution.

- (iii) Mediators shall take reasonable steps to prevent any misconduct that might invalidate an agreement reached at mediation or create or aggravate a hostile environment. Mediators will also be satisfied that the parties have reached agreement of their own volition and knowingly consent to any resolution.

(c) **Termination of the Process**

- (i) The Mediator shall ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator and all other parties without being required to give any justification for doing so.
- (ii) Mediators may withdraw from a mediation if a negotiation among the parties assumes a character that to the Mediator appears unconscionable or illegal.

(d) **Feedback**

Unless inappropriate in the circumstances, Mediators shall, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete a Feedback Form and send the same to the Reviewer or IIAM.

(e) **Fees**

- (i) Mediators shall, before accepting appointment, agree with the parties how their fees and expenses will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions). Mediators who withdraw from a case shall return to the parties any fees already paid relating to the period following withdrawal.
- (ii) Mediators shall not suggest to the parties that their remuneration should be based on or related to the outcome of the mediation.

4. CONFIDENTIALITY

- (a) Mediators shall keep confidential all information acquired in the course of serving as a mediator in a mediation unless —
 - (i) Compelled to make a disclosure by law, by a Court of Law or by some governmental agency having appropriate authority and jurisdiction; or

- (ii) Required under paragraph 4(b), in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality; or
 - (iii) The specific information comes into the public domain (otherwise than as a result of a disclosure by the Mediator); or
 - (iv) The parties release the Mediator from the confidentiality restriction; or
 - (v) Necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability.
- (b) The Mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided none of the details of that case are disclosed.
- (c) Mediators shall discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.
- (d) Mediators may use or disclose confidential information obtained during a mediation when, and to the extent that, they believe it to be necessary to prevent physical or psychological injury to a party, the commission of a crime (including an attempt to commit a crime), the concealment of a crime, or threat to a party. Before using or disclosing such information, if not otherwise required to be disclosed by law, Mediators must, if they consider it appropriate, make a good faith effort to persuade the party and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.

5. PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

- (a) The Mediator shall follow and observe the Code strictly and with due diligence and shall not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator.
- (b) The Mediator may consult the institution or IIAM about any professional or ethical dilemmas.
- (c) Where the Mediator is subject to the Code, a party to a mediation who believes there has been a lack of compliance with this Code may submit a complaint to this effect to IIAM on the Mediators' conduct Assessment.
- (d) Adherence to this Code does not replace or qualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply in specific circumstances.

PART-III

IIAM MEDIATORS' CONDUCT ASSESSMENT PROCESS

(As adopted As adopted based on the APCAM and IMI
Professional Conduct Assessment Process)

The principles of diligence, independence, neutrality, impartiality, fairness and integrity are vital to the mediation process, and are set out in IIAM Mediators' Code of Professional Conduct. Users of mediation services are entitled to trust that IIAM empanelled Mediators adhere rigorously to these basic principles. In the unlikely event of a failure by an IIAM Mediator to observe the IIAM Code, a Party to the mediation conducted by an IIAM Mediator can apply to have the Mediator's conduct independently assessed under this process.

The Assessment Process involves a maximum of two steps —

- ◆ Discussion
- ◆ Professional Conduct Assessment

All complaints regarding an IIAM Mediator's non-compliance with the IIAM Code must first be discussed with the Mediator. If this does not resolve the complaint, the Party may file a formal request for a Professional Conduct Assessment.

1. **DISCUSSION STEP**

A Party in a mediation who believes that an IIAM Mediator has not complied with the Mediator's Code of Conduct, and who wishes to file a complaint, must first raise the matter with the Mediator in person within one month of becoming aware of the alleged breach of the Code. This Discussion Step shall take place in confidence, and all parties will be bound to treat all non-public information as confidential.

2. **PROFESSIONAL CONDUCT ASSESSMENT PROCESS**

- (a) The Professional Conduct Assessment Process may be activated by a Party in a mediation to seek redress for an alleged code of conduct breach if the Discussion Step has not resolved the issue, within a period of one month. To activate the Assessment Process, the Party shall file a formal complaint to IIAM. IIAM shall promptly acknowledge receipt and send a copy to the Mediator whose conduct is the subject of the Complaint.
- (b) If the complaint is seen prima-facie to be frivolous, the same will be dismissed by IIAM and intimated to the Party.
- (c) After having received an admissible Application, IIAM shall promptly appoint a Professional Conduct Assessor being an independent lawyer, retired Judge or other IIAM empanelled Mediator to hear the complaint and the Mediator's case and decide upon the resolution.
- (d) The Assessor shall decide the appropriate process in each case, which may involve one or more hearings in person, be conducted by written, electronic, video or telephonic communications, or any suitable combination. The Assessor shall in all cases strive to understand all relevant facts, and allow the Party and the Mediator full opportunity to present their respective cases and to rebut the other side's arguments. Each party shall have the right to be assisted by counsel, and the Assessor may call and hear witnesses and experts. The Assessment sessions will be private.
- (e) The Assessment Process will last no more than three months following appointment of the Assessor by IIAM. At the end of the Assessment Process, the Assessor shall issue a decision having one or more of the following outcomes —
 - (i) Reject all or part of the Complaint.
 - (ii) Uphold all or part of the Complaint, but without issuing any sanction.
 - (iii) Issue a written warning or reprimand.
 - (iv) Suspend the IIAM Mediator for up to one year.
 - (v) Permanently withdraw the mediator from IIAM Panel.
 - (vi) Make an order as to costs of the Assessment Process if the parties do not agree to share the costs of the Assessment Process equally.

- (f) The decision of the Assessor will be accompanied by its reasons. The decision shall become effective as an arbitral award.
- (g) When imposing the sanction of suspension or permanent withdrawal of the IIAM Mediator, the Assessor may determine that this sanction will be suspended unless on a subsequent occasion the Mediator is in further breach of the Code of Professional Conduct within a certain period.
- (h) The Assessor shall immediately send a copy of their decision to the —
 - ◆ Party;
 - ◆ Mediator against whom the complaint is directed; and
 - ◆ IIAM.
- (i) Subject to sub-section (e)(vi), the costs of the Assessment Process will be shared equally by the Party and the Mediator.

3. **ASSESSORS**

- (a) IIAM shall strive to appoint Assessors who are reasonably local to the Parties and the Mediator in each case in order to contain costs.
- (b) An estimate of costs will be provided to the parties promptly after the Assessor is appointed.
- (c) The Assessor may be challenged by the Party or by the Mediator, in the event of actual or potential conflict of interest or for any other valid reason which could compromise impartiality. Decisions on challenges will be made by IIAM.
- (d) Any challenge by the Party or Mediator must be presented to IIAM no later than 7 days after notification of the identity of the Assessor and be fully supported by reasons.

4. **CONFIDENTIALITY**

Assessors as well as all parties and IIAM are under an obligation to maintain confidentiality of all information to which they become exposed during the Assessment Process, except to the extent that publication of a final and binding decision may be ordered.

5. **PUBLICATION**

IIAM shall have the power to publish the decisions of the Assessor in such manner(s) as it may deem appropriate, but shall not publish any details which may enable the identification of the parties or disclose any confidential information.

PART-IV

SCHEDULES

**SCHEDULE-1
MODEL AGREEMENT TO MEDIATE**

Can be downloaded from IIAM website:
http://www.arbitrationindia.com/pdf/form_om2.pdf

**SCHEDULE-2
IIAM MEDIATOR REQUEST FORM**

Can be downloaded from IIAM website:
http://www.arbitrationindia.com/pdf/form_m7.doc

**SCHEDULE-3
IIAM MEDIATOR EVALUATION FORM**

Can be downloaded from IIAM website:
http://www.arbitrationindia.com/pdf/form_m8.doc

**SCHEDULE-4
IIAM MEDIATION FEE SCHEDULE**

Can be downloaded from IIAM website:
http://www.arbitrationindia.com/pdf/mediation_fee.pdf

**SCHEDULE-5
RECOMMENDED CLAUSES**

FUTURE DISPUTES

Parties to a contract who wish to have any future disputes referred to mediation under the IIAM Mediation Rules may insert a dispute resolution clause in the contract, using any one of following model clauses, according to their requirement.

Suggested Mediation Clause

“In the event of any dispute, difference or controversy arising out of or in relation to this contract, including any question regarding to its existence, validity or termination, the parties shall seek settlement of that dispute by mediation/conciliation in accordance with the IIAM Mediation Rules.”

Suggested Med-Arb Clause

“Any dispute, difference or controversy arising out of or in connection with this contract, including any question regarding to its existence, validity or termination, shall first be referred to mediation at the Indian Institute of Arbitration & Mediation (IIAM) and in accordance with its then current Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and determined by arbitration by IIAM in accordance with its Arbitration Rules and in accordance with the Arbitration Act.”

Suggested Arb-Med-Arb Clause

“Any dispute, difference or controversy arising out of or in connection with this contract, including any question regarding its existence, operation, termination, validity or breach thereof shall be referred to and finally resolved by arbitration as per the Arbitration Act, and shall be conducted by the Indian Institute of Arbitration & Mediation, in accordance with their Arbitration Rules (“IIAM Arbitration Rules”) for the time being in force.

It is further agreed that following the commencement of arbitration, the parties will attempt in good faith to resolve such dispute, difference or controversy through mediation, as per the IIAM Arb-Med-Arb Procedure for the time being in force. Any settlement reached in the course of mediation shall be referred to the arbitral tribunal appointed by IIAM and may be made a consent award on agreed terms.”

Suggested ODR Clause

“In case of any dispute, difference or controversy arising out of or in connection with this contract, parties may attempt to resolve it amicably by negotiating directly and in case of failure to resolve the dispute or difference shall refer the same to mediation at the Indian Institute of Arbitration & Mediation (IIAM) and in accordance with its then current Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and determined by arbitration by

IIAM in accordance with its Arbitration Rules and in accordance with the Arbitration Act. The parties can initiate and conduct the processes of negotiation, mediation and arbitration online through the Peacegate Application of IIAM.”

* The parties may wish to add the following also in the dispute resolution clause —

- ◆ The number of arbitrators shall be (one or three).
- ◆ The seat/ venue of arbitration shall be (city and/or country).
[Seat would denote the jurisdictional place and venue the physical place]
- ◆ The language of the arbitration shall be (language).

PROJECT MEDIATION

Parties to a contract who wish to include Project mediation in their contract under the IIAM Mediation Rules may insert a dispute management clause in the contract, as per the following model clause.

Suggested Dispute Management Clause

The parties agree that during the pendency of the contract period, they have agreed to jointly appoint (Name of the mediator) as the Project Mediator under the IIAM Mediation Rules, who would assist the parties to resolve a particular dispute or difference or when the parties need to find a different perspective to an issue requiring a joint solution, under the contract, during the entire contract period.

* The Parties can choose to add any of the dispute resolution clauses mentioned above together with the dispute management clause, so as to make it more effective and complete.

INTERNATIONAL DISPUTES

Parties to an international or cross-border contract who wish to have any future disputes referred to mediation can either use the IIAM Clause or alternatively use the APCAM Mediation Clause available in the APCAM website at www.apcam.asia

EXISTING DISPUTES

Parties who wish to mediate an existing dispute, but there is no agreement between the parties for mediation, can either enter into an IIAM Mediation agreement or can initiate mediation without any agreement.

For information please contact IIAM Director: dir@arbitrationindia.com

PART-V

GUIDE TO IIAM MEDIATION RULES

1. What is mediation? How it is different from litigation or arbitration and what is the advantage?

Mediation is a settlement effort, which utilizes the services of an impartial, third party mediator in an effort to reach a mutually acceptable agreement. Mediation provides an efficient, effective, speedy, convenient and less expensive process to resolve disputes with dignity, mutuality, respect and civility where parties participate in arriving at a negotiated settlement rather than being confronted with a third-party adjudication of their disputes. In mediation, ultimately the resolution is made by the parties and no decision is imposed on them. But in courts and other systems, the decision is taken by the Judge or Arbitrator and the decision is imposed on the parties, whether they like it or not. In mediation, since the decision is taken by both the parties, it is a “Win-Win” situation for both and they would happily comply with the decision rather than wasting time on appeals against an imposed decision. It helps to maintain ongoing relationships and resolve the dispute amicably. The very fact that it enables the parties to sit across the table and negotiate, participating in the process itself creates an atmosphere of harmony and peace.

2. What type of disputes can be resolved through mediation?

All types of civil and commercial disputes can be resolved through mediation, except certain special legislations like winding up of a company.

3. Is mediation a compromise and if I initiate mediation, will it not be considered as my weakness?

There is a general misconception that in mediation you have to compromise. Mediation is another dispute resolution process, just like any other one. The major

difference being, it is an interest-based process, where the resolution is arrived at by the parties on a collaborative method to maximize mutual gain. Therefore, globally mediation is also referred as “Appropriate Dispute Resolution” (ADR). It is the only process which focuses on needs and relationships and seeks not only to resolve the underlying problem, but also to add value. Here, in fact dispute is considered as an opportunity. Internationally, opting for mediation is also considered as an expression of best governance and social commitment. Many MNC’s have signed the “Pledge to Mediate”, expressing their commitment to resolve dispute amicably to their potential business partners and clients.

4. Can I initiate mediation in a matter pending before a court?

Mediation can be initiated at any stage. It can be initiated at the beginning of a dispute or when the matter is before a court. It would always be better to initiate mediation at the beginning, as the parties would be less hostile. In fact, even the Supreme Court of India has said in a decision that mediation is the best form of dispute resolution and it should be taken at the earliest opportunity to stop the negative factor from growing and widening its fangs which may not be conducive to any of the litigants. The courts also encourage the parties to resolve their disputes through mediation. If a party initiates mediation and the other side does not attend, it will create an adverse impression against the party who refused to participate in mediation.

5. Is mediation legally approved in India?

Even though we do not have a Mediation Act in India, mediation is accepted as a legally approved manner of dispute resolution in India. It is recognised under the Civil Procedure Code and courts refer matters pending before it to for mediation. Under the Arbitration & Conciliation Act, 1996, a settlement agreement made by the conciliator after the resolution of a dispute is equivalent to an arbitral award or a decree of a civil court. If a party subsequent to the settlement fails to comply with it, the other party could get the settlement agreement executed through a court in the same manner as a court decree. Mediation and Conciliation are terms often used interchangeably and in all practical aspects, the procedure is the same. As per the IIAM Rules, the parties on conclusion of mediation can agree to make the settlement agreement under the Arbitration & Conciliation Act, so as to give enforceability for the settlement.

6. What are the legal provisions based on which the outcome of mediation is made legal and binding?

The relevant provisions under the Arbitration and Conciliation Act, 1996, relevant for mediation/conciliation are as follows: Section 73 – Settlement agreement. (1)

When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations. (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement. (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. Section 74 – Status and effect of settlement agreement.

The settlement agreement shall have an effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

7. How can we be sure that the conversation in mediation is confidential and it will not be taken as evidence in other proceedings?

The entire mediation proceedings are confidential and whatever said during mediation is treated as confidential. This protection is provided by the agreement to mediate executed by the parties, as well as the Arbitration and Conciliation Act, 1996. Section 81 – Admissibility of evidence in other proceedings – The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings, (a) Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute; (b) Admissions made by the other party in the course of the conciliation proceedings; (c) Proposals made by the conciliator; (d) The fact that the other party had indicated to accept a proposal for settlement made by the conciliator.

8. What is the importance of IIAM Mediation Rules?

The IIAM Mediation Rules are a set of procedural rules covering all aspects of the institutional mediation process, which helps the parties and mediators to take maximum advantage of the flexible procedures available in mediation for the resolution of disputes quickly and economically. IIAM Mediation Rules also contains provisions for assisted deal-making or deal-mediation and also for project mediation. The Rules also contain provisions for online or offline mediation through “Peacegate”, the digital platform of IIAM. The IIAM Mediation Rules also contains the IIAM Mediators’ Code of Professional Conduct and IIAM Mediators’ Conduct Assessment Process, adopted

based on the Code prescribed by the Asia Pacific Centre for Arbitration & Mediation (APCAM) and the International Mediation Institute (IMI).

9. Can we initiate mediation for the resolution of a dispute with a foreign party?

Yes. Mediation is a process internationally accepted and most of the MNC's have started using mediation as the first option for dispute resolution. IIAM conducts international mediation under the APCAM Rules, which is an organisation formed by more than 10 international centres and having centres in many parts of the world, helping the parties to conduct international mediation under one rule and one fee-schedule. IIAM being the APCAM Centre in India also maintain a panel of international mediators in all these countries.

The importance of private mediation in international business dispute resolution has become even more pertinent after the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019 (Singapore Convention), w.e.f 07 August 2019, in which India is a signatory, among other 51 countries. Now settlement agreements arrived at by way of mediation becomes enforceable like an arbitral award in all these 52 countries as per the Convention. But the Convention does not apply to court-annexed mediations, making the importance of private mediations in cross-border business disputes highly recommended.

In an international dispute, a settlement agreement can also be made through the AMA Procedure, whereby the settlement can be made as an arbitral award on consent and it becomes executable as per the New York convention in 156 countries.

10. How much will it cost to mediate under the IIAM Mediation Rules?

IIAM Mediation is very cost-effective, especially considering the time-bound manner in which the dispute is resolved. The costs and expenses of mediation will be governed by the IIAM Mediation Fee Schedule. The current fee schedule of IIAM, mentioned in Schedule-4, shall be notified by IIAM from time to time or published in its official web site. There is separate fee schedule for Domestic Commercial Mediation, Domestic Family Mediation and Community Mediation. IIAM Community Mediation Service (CMS) is for disputes which are purely relationship based. International or cross-border mediations are conducted by IIAM under the APCAM Rules, which will help the parties to conduct mediation in any of the Asia-Pacific country members of APCAM under a single Rule and Fee schedule in all these countries.

11. How long does the entire proceedings take?

Even though as per the IIAM Mediation Rules, the mediator shall use his best endeavours to conclude the mediation within 60 days of his appointment, normally a commercial mediation gets over within 4 to 8 sessions.

12. Can we bring lawyers to represent our case in mediation?

Yes, you can. In fact, mediation would become more successful and credible when the parties' advocates or advisers are knowledgeable and skilled in the mediation process. Trained mediation advocates can bring value addition to the process and outcome. In fact, the changing role of a lawyer as a dispute resolution specialist, bringing in specialist representation in mediation has raised the standard, credibility and acceptance of mediation world over.

13. How reliable and professional are the mediators?

Mediation is said to be as good as the Mediator! IIAM Mediators are certified under IIAM Mediator Accreditation System and through the Qualifying Assessment Programs (QAP) of APCAM. They are bound by the Code of Conduct and Ethical Standards prescribed by IIAM and APCAM. The Mediator training program of IIAM follows one of the best curriculums available globally and equips a person to become an efficient professional mediator.

14. How can I believe a mediator and if I have any complaint, can I change the mediator?

Trust underpins the mediation process. If the parties do not trust a mediator's integrity in terms of competence diligence, neutrality, independence, impartiality, fairness and the ability to respect confidences, mediation is unlikely to succeed. The IIAM Mediators' Code of Professional Conduct provides users of mediation services with a concise statement of the ethical standards they can expect from Mediators who choose to adopt its terms and sets standards that they can be expected to meet. Users who believe the standards established in this Code have not been met may prefer a complaint to IIAM on the Mediators' conduct Assessment or can request for a change of mediator. The Rules have been made as per the guidelines of the International Mediation Institute, The Hague (IMI). Details can be seen in the IIAM Mediation Rules.

15. Can the mediator be taken as a witness in any other proceedings?

No, the mediator cannot be cited as a witness in any other proceedings. The Arbitration and Conciliation Act, specifically debar such actions. Section 80 – Role of conciliator in other proceedings. Unless otherwise agreed by the parties: (a) The conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings; (b) The conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

16. What if after I initiate mediation, the other party does not turn up?

Mediation is a voluntary and non-binding process and the parties are free not to attend or leave the process at any stage, if that party is not happy with the process or outcome. But as per our experience, every invitation to attend a mediation process is normally accepted by the other party.

But even if the other party does not turn up, it is an advantage to initiate mediation first, as after the completion of mediation and on receipt of the Mediator's Completion Report, IIAM will prepare the Mediation Status Report or Non-starter Certificate and this is given to the Parties. This is given even if the dispute is not resolved or the mediation could not be held due to the absence of the opposite Party. This is a valuable document when the initiating party approaches the court.

17. In mediation, if the other party does not turn up, will my fee be refunded?

While registering a dispute for mediation, the Initiating Party at the time of filing of Request has to pay the registration fee as per the relevant fee schedule, which is non-refundable. Once the mediator is appointed, the initiating party has to make a deposit for 2 sessions of mediator fee and administrative fee, as per the relevant fee schedule. If the other side refuse mediation prior to the first sitting date, the entire fee will be refunded. If the mediation is abandoned due to the absence of the opposite party on the first date or due to non-agreement in the first session itself, the balance amount will be refunded to the initiating party.

18. How can I initiate mediation if there is no mediation centre near me?

You can initiate mediation through a Centre near you or online by using the "Peacegate" Application, the digital platform of IIAM, which can be downloaded from www.peacegate.in. Through the App you can not only initiate mediation, but also search for the nearby mediation centres and also search for mediators or mediation advisers/consultants.

19. What is Deal Mediation? And how is it different from regular Negotiation?

Deal-mediation, which is also known as Transactional-mediation or Assisted deal-making, is a process, whereby parties attempt to make or conclude deals with the assistance of a mediator, who is trained in effective negotiation. Unlike a regular negotiation where parties would have inhibitions to reveal many confidential information, in deal-mediation, the parties can comfortably discuss with the mediator, as the mediator is bound by confidentiality and can help the parties to navigate discussions in a better manner to conclude the best business deals.

20. What is Project Mediation? What are the benefits?

Project-Mediation is a method of Dispute Management, by which the parties to a contract can appoint a Project Mediator and an exclusive hotline hub is created in the Peacegate App, whereby the parties can get the service of a mediator throughout the period of the contract, whenever the parties' own discussions cannot resolve a particular dispute or difference or when the parties need to find a different perspective to an issue requiring a joint solution. This will afford the opportunity to work together, in a more collaborative and mutually beneficial environment and oversee that the contract proceeds smoothly. When the parties invoke Project Mediation under the IIAM Rules, it is agreed by the parties that they shall not disrupt the services or contractual obligations under the contract and shall continue with the terms of the contract.



The Rules applicable for mediation shall be IIAM Mediation Rules made effective as on the date of commencement of mediation



Access latest IIAM Mediation Rules at:
www.arbitrationindia.com/pdf/rules_mediation.pdf

Mediation Rules of the
Indian Institute of Arbitration & Mediation

For more details:

Email: info@arbitrationindia.com

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