

# MEDIATION RULES

APCAM MEDIATION RULES  
WITH MEDIATORS' CODE OF PROFESSIONAL CONDUCT  
CONDUCT ASSESSMENT PROCESS & FEE SCHEDULE



**APCAM**

ASIA PACIFIC CENTRE FOR  
ARBITRATION & MEDIATION



# **APCAM MEDIATION RULES**

WITH  
MEDIATORS' CODE OF PROFESSIONAL CONDUCT,  
MEDIATORS' CONDUCT ASSESSMENT PROCESS  
&  
MEDIATION FEE SCHEDULE



**NOTES**

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[w.e.f. 06 August 2020]

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**PREAMBLE**

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APCAM MEDIATION RULES  
PREAMBLE

**ASIA-PACIFIC CENTRE FOR  
ARBITRATION AND MEDIATION (APCAM)****MEDIATION RULES**

[w.e.f. 06 August 2020]

**Preamble**

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APCAM Mediation is based on the Mediation Rules published by the Asia-Pacific Centre for Arbitration & Mediation (“APCAM”), 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 through international and cross-border mediation.

APCAM Mediation Rules are intended to provide effective mediation services through the use of administered mediation on global standards. Being an international ADR centre having mediation centres in various Asia-Pacific countries, the APCAM Mediation Rules helps the business community to resolve their international commercial and business disputes by mediation under a single set of Mediation Rules, governed by a uniform fee structure in all the constituent countries. The Rules reflect the best practices and latest developments in international mediation, which allow the procedure to be as short and provides a cost structure and management to keep the services cost-effective. The Rules also provide for many innovative concepts like transactional-mediation, deal-mediation or assisted

APCAM MEDIATION RULES  
PREAMBLE

deal-making, where parties use mediation to help them to conclude deals and for project mediation, which helps the parties to oversee the contract and avoid disputes. The costs and expenses of mediation will be governed by the Fee Schedule under the APCAM Mediation Rules.

APCAM Mediation Rules shall apply to mediation proceedings of present or future disputes where the parties seek an amicable settlement of such disputes. The Rules shall be applicable where, either by stipulation in their contract by way of a mediation clause or by an agreement to mediate, the parties have agreed that the mediation proceedings shall take place in accordance with APCAM Rules. In the absence of an APCAM mediation clause, if the parties have a mediation clause to mediate under the respective mediation clauses of the constituent institutional members of APCAM, these Rules shall apply, if so, prescribed under their mediation rules.

The APCAM Mediators' Code of Professional Conduct and APCAM Mediators' Conduct Assessment Process are also part of this Rule Book, which prescribes the Rules of Professional Conduct of APCAM Mediators.

For further information about APCAM services, rules and procedures, please see the website [www.apcam.asia](http://www.apcam.asia).



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**MEDIATION RULES**

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# APCAM MEDIATION RULES

## APCAM MEDIATION RULES

[w.e.f. 06 August 2020]

### Rule 1

#### Scope and application

- (1) Where any agreement, submission or reference provides for mediation by the Asia-Pacific Centre for Arbitration and Mediation (“APCAM”) or under the Mediation Rules of the Asia-Pacific Centre for Arbitration and Mediation (“APCAM Mediation Rules”), the parties shall be taken to have agreed that the mediation shall be conducted in accordance with the following Rules, or such amended Rules or affiliated Rules as APCAM 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.
- (2) 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 APCAM Mediation Rules.
- (3) 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 APCAM Arbitration Rules.
- (4) Definitions of specific terms used under the Rules may be referred to in Schedule-1.

# APCAM MEDIATION RULES

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**Section 1**  
**MEDIATION**

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APCAM MEDIATION RULES  
SECTION 1

## Section 1 MEDIATION

### Rule 2 Initiation of Mediation Process

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- (1) If a dispute arises, a party may seek the initiation of mediation (“initiating party”) by delivering a written invitation for mediation to the other party (“opposite party”). Such invitation 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.
- (2) The opposite party who receives an invitation for mediation shall notify the initiating party and APCAM within fifteen 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 fifteen days shall be treated as a refusal to mediate. On receipt of reply, the initiating party shall file the Request for Mediation to APCAM.
- (3) Notwithstanding anything contained in Rule 2(1), 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 APCAM.
- (4) On receipt of Request for Mediation, APCAM shall send an invitation to mediate to the opposite party mentioning the mediation request and the

scheduled date, time and venue of the 1<sup>st</sup> 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 APCAM can nominate another mediator or reschedule the 1<sup>st</sup> 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.

- (5) In case the mediation is initiated based on Arb-Med-Arb procedure, APCAM shall send an invitation to the Parties to attend the 1<sup>st</sup> session of mediation, mentioning the name of the Mediator or Mediators as the case may be and the date, time and venue of the 1<sup>st</sup> 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 APCAM can nominate another mediator or reschedule the 1<sup>st</sup> 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.
- (6) In case the initiating party has initiated online mediation by making the Request for Mediation,

APCAM shall send an online invitation to the Parties to attend the 1<sup>st</sup> 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 1<sup>st</sup> 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 APCAM can nominate another mediator or reschedule the 1<sup>st</sup> 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.

- (7) In case of deal-mediation, the parties can jointly initiate mediation, by making the Request for Mediation. If the parties have not nominated the mediator, APCAM shall nominate the mediator and shall send an invitation to the Parties to attend the 1<sup>st</sup> session of mediation, mentioning the name of the Mediator or Mediators as the case may be and intimating the details of the 1<sup>st</sup> 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 APCAM can nominate another mediator or reschedule the session based on the convenience of the parties and the mediator.

### **Rule 3**

#### **Appointment of Mediator**

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- (1) When the initiating Party submits the Request for Mediation, (s)he can nominate a mediator from the panel of APCAM accredited mediators.

APCAM MEDIATION RULES  
SECTION 1 | RULE 3

- (2) 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, APCAM shall appoint a mediator who is prepared to serve.
- (3) 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, APCAM 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 APCAM shall propose the said mediator from among the appointed mediators.
- (4) 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 APCAM, any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. If any disclosure is made, APCAM shall immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 3 days, (s)he shall not be appointed. The substituted mediator shall be appointed in the same manner as the mediator, who is replaced.
- (5) 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 4**

### **Place of Mediation**

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- (1) The parties are free to agree on the place of mediation.

Explanation — For the avoidance of any doubt, it is clarified that when the parties have specified the place of mediation in the agreement, the jurisdiction on mediation proceedings shall be confined to such place, but if no such place is specified, it shall be deemed to the place of arbitration, if such place is specified and in the absence of any designated place for mediation or arbitration, it shall be as provided in the jurisdiction clause in case of a contractual dispute or the jurisdiction will be to courts having jurisdiction to decide the questions forming the subject-matter of the mediation if the same had been the subject-matter of a suit.

- (2) The venue of mediation may be fixed by APCAM, which may be APCAM Centres or any other convenient location agreeable to the mediator and the parties. The mediation shall nonetheless be considered for all purposes as a mediation conducted at the place.

## **Rule 5**

### **Mediation Process**

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- (1) Upon appointment of mediator, APCAM shall work with the parties to establish the time and location of each mediation session.
- (2) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

- (3) 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 —
- (a) 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.
  - (b) The mediator may conduct joint or separate meetings with the parties.
  - (c) The parties or their counsels/ consultants/ advisers shall, if so required, before the commencement of mediation, provide to the mediator and APCAM, a pre-mediation submission 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.
  - (d) 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.
  - (e) 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.

- (f) 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 APCAM, arrange for virtual meeting of the parties, which shall be considered as mediation session.

## **Rule 6**

### **Time frame for Mediation**

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The mediator shall use his/her best endeavours to conclude the mediation within 90 days of his/her appointment. The validity of the appointment shall not extend beyond a period of four months without the written consent of all parties.

## **Rule 7**

### **Role of Mediator**

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- (1) The mediator may conduct the mediation in such manner, as (s)he considers appropriate, taking into account the circumstances of the case, the needs of the parties and the need for a speedy settlement of the dispute or for an effective deal making.
- (2) The mediator is not bound by the law of procedure or of evidence.
- (3) The mediator shall be guided by the principles of fairness and justice and shall be bound by the APCAM Mediators' Professional Code of Conduct, as specified in Schedule-2.
- (4) 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.

- (5) The mediator may 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 —

- (a) the attempt to commit any physical or psychological threat or injury to a party; or
- (b) 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 needs to withdraw from mediation.

- (6) 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.

- (7) 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.
- (8) 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 APCAM. This shall be signed by the mediator and the authorised officer of APCAM.
- (9) 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**

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- (1) 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.

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

- (2) 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.
- (3) 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 on/upon 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.

- (4) 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.
- (5) A party may —

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SECTION 1 | RULE 9

- (a) withdraw from the mediation at any time during the mediation,
  - (b) be accompanied to the mediation, and assisted by, a person (including a counsel, consultant or adviser) who is not a party, or
  - (c) obtain independent legal advice at any time during the mediation.
- (6) A party or parties may terminate the appointment of a mediator for any reason of apprehension of neutrality or violation of code of conduct and shall inform the mediator the reason for the termination and appoint another mediator or request APCAM to appoint another mediator.

## **Rule 9**

### **Role of APCAM**

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

## **Rule 10**

### **Representation**

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- (1) 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 the Mediator 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.

Explanation — In case there is a change of representative such information shall also be notified in advance as specified above.

- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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 the Mediator, APCAM and exchanged between the parties.

## **Rule 11**

### **Privacy, Confidentiality & Voluntariness**

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- (1) Mediation is a private, confidential and voluntary process. The parties may withdraw from the

APCAM MEDIATION RULES  
SECTION 1 | RULE 11

mediation at any time by informing the Mediator and all other parties without being required to give any justification for doing so.

- (2) 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, designated by him/her, for clerical assistance, provided such person also signs a declaration of confidentiality.

- (3) 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(5).

- (4) 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, as per the applicable law of evidence, shall not be rendered inadmissible as a result of its use in the mediation session.
- (5) 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 APCAM

staff as required shall be permitted to be present during mediation.

- (6) 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.
- (7) 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 —
  - (a) Views expressed by a party in the course of mediation proceedings.
  - (b) Documents obtained during mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators.
  - (c) Proposals made or views expressed by the mediator.
  - (d) Admission made by a party in the course of mediation proceedings.
  - (e) The fact that a party had or had not indicated willingness to accept a proposal.

## **Rule 12**

### **Settlement**

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- (1) 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.
- (2) If the parties reach agreement on the settlement terms, the mediator with the assistance of APCAM,

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SECTION 1 | RULE 13

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.

- (3) When the parties sign the MSA, it shall be final and binding on the parties and persons claiming under them.
- (4) 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 APCAM and APCAM shall forward the same to the Arbitral Tribunal along with the Mediation Status Report.
- (5) 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**

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- (1) The mediation process shall come to end —
  - (a) Upon the signing of MSA by the parties or;
  - (b) Upon the written advice of the mediator after consultation with the parties that in his/her opinion further attempts at mediation are no longer justified or;
  - (c) 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 APCAM 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 APCAM, it shall be deemed to be a notification by the party that the mediation is terminated.

- (2) On completion of mediation, the mediator shall submit a Completion Report to APCAM.
- (3) After receipt of Completion Report, APCAM 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, APCAM may issue a Mediation Non-starter Certificate to the parties who appeared, if they so request, intimating the final status of the process.

- (4) In case of mediation under the Arb-Med-Arb procedure, APCAM 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**

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- (1) Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of

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SECTION 1 | RULE 14

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 —

- (a) The mediator's fees and expenses;
  - (b) Expenses for any expert advice or opinion requested by the mediator with the consent of the parties; and
  - (c) The APCAM administrative costs in support of mediation.
  - (d) Any other costs that the parties have consented to bear, such as the payment towards translators and interpreters.
- (2) The Mediator fee shall be fixed by APCAM in accordance with the APCAM Mediation Fee Schedule, unless the mediator and the parties have agreed on a different engagement term at the time of appointment.
  - (3) The administrative costs of mediation shall be fixed by APCAM in accordance with the APCAM Mediation Fee Schedule.
  - (4) The payment schedule and deposits as per APCAM Mediation Fee Schedule shall be complied by the parties and on default, APCAM may suspend the mediation process until such deposit is made.
  - (5) Any surplus funds deposited shall be returned to the parties at the conclusion of mediation.
  - (6) Each party shall be liable for the payment of charges or fees to their respective counsels/ consultants/ advisers.

## **Rule 15**

### **Feedback**

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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 and/or Mediator Evaluation Form and send the same to the Reviewer or APCAM. The feedback shall remain confidential and shall be used for preparing the Feedback Digest by the Reviewer as per guidelines given by APCAM, to be used in the Mediator's profile.

## **Rule 16**

### **Mediator's Role in Subsequent Proceedings**

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The parties undertake that the mediator shall not be appointed as adjudicator, arbitrator or representative, counsel, expert or witness of any party in any subsequent adjudication, investigation, 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**

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- (1) All parties recognize that at the mediation session(s) and at every other point in the proceedings —
  - (a) Neither APCAM nor the mediator shall be acting as a legal adviser or legal representative for any of the parties.
  - (b) Neither APCAM 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.
- (c) Neither APCAM 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.
  - (d) Neither APCAM nor any mediator can guarantee that a mediation session will result in a settlement or deal.
- (2) 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**

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- (1) The parties jointly and severally release, discharge and indemnify the mediator and APCAM 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 APCAM Mediators' Professional Code of Conduct.
- (2) 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**

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If any of the parties feels that the mediator is guilty of violation of the APCAM Mediators' Professional Code of Conduct, they shall within a period of one month, from the date of such apprehension, initiate the APCAM Mediators' Conduct Assessment Process.

## **Rule 20**

### **General Provisions**

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- (1) Under these Rules a decision to be taken by APCAM, 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.
- (2) The interpretation of any provision in these Rules shall be made by APCAM.
- (3) The Fee structure under the Rules shall be the fee published by APCAM in the APCAM Mediation Fee Schedule as on the date of submission of mediation. The current fee schedule of APCAM shall be notified by APCAM from time to time or published in its official web site.
- (4) 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

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SECTION 1 | RULE 20

forms, resolve procedural disputes, impose time limits on the parties, and otherwise require a party to take action or refrain from taking action.

- (5) APCAM 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.

APCAM MEDIATION RULES  
SECTION 2

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**Section 2**  
**ONLINE MEDIATION**

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APCAM MEDIATION RULES  
SECTION 2

## Section 2 ONLINE MEDIATION

### Rule 21 Scope

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

### Rule 22 Initiation of Online Mediation

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- (1) 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.

Explanation — The initiating party and the opposite party shall also provide the details of its representatives such as counsel/ consultant/ expert, which shall include their mobile numbers and email addresses.

- (2) 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.

However, prior notice must be given before each session about the method to be used, to the mediator and the parties in case the proceedings use online and offline methods.

- (3) 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 23**

#### **Online Security and Presumptions**

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- (1) The digital platform used for online mediation should ensure the following features and safety measures —
- (a) Allow the parties to opt for textual communications – chat rooms, audio conferencing or video conferencing.
  - (b) Allow the parties facilities for online waiting rooms, general discussion room and caucus rooms.
  - (c) The entry to the rooms is restricted to registered parties only, with list of participants issued to all participating parties and password protected.
  - (d) Ensure that communications are private and confidential and recording of any communication whatsoever, is not permitted.

APCAM MEDIATION RULES  
SECTION 2 | RULE 23

- (2) 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.

- (3) In case of such disruption of connectivity, the mediation session shall be kept in abeyance till such party reconnects in the platform.
- (4) 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.

- (5) In online mediation, the parties and the mediator can make and sign the agreement to mediate and the MSA online digitally, 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 3**  
**MEDIATION UNDER ARB-MED-ARB PROCEDURE**



APCAM MEDIATION RULES  
SECTION 3

### Section 3

## MEDIATION UNDER ARB-MED-ARB PROCEDURE

### Rule 24

#### Scope and Procedure

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- (1) Once a party invokes an AMA Clause to initiate an Arb-Med-Arb Procedure as per the APCAM Arbitration Rules, the Emergency Arbitrator shall stay the arbitration and inform APCAM that the case be submitted for mediation. APCAM will initiate mediation and submit the case to mediation under these Rules.
- (2) The mediation shall be completed within 90 days from the Mediation Commencement Date, unless, APCAM considers it appropriate to extend the time.
- (3) On completion of mediation, the mediator shall submit a Completion Report to APCAM.
- (4) After receipt of Completion Report, APCAM shall issue a Mediation Status Report, as follows —
  - (a) If the dispute is not resolved by mediation, APCAM 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 resolved by mediation, so that arbitration proceedings can be resumed.

- (b) If the dispute is resolved, either fully or partially, APCAM 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.



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**Section 4**  
**PROJECT MEDIATION**

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APCAM MEDIATION RULES  
SECTION 4

## Section 4 PROJECT MEDIATION

### Rule 25 Scope and Procedure

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- (1) APCAM 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.
- (2) The DM clause can be a stand-alone clause in the contract or part of a Dispute Resolution clause.
- (3) 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.
- (4) Once the parties include an APCAM DM clause in their contract, an exclusive hotline hub is created, with the parties to the contract and the Project Mediator.
- (5) The hotline hub will be available to the parties till the culmination of the contract.

## **Rule 26**

### **Initiation of Mediation**

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- (1) 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.
- (2) 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.
- (3) The process of mediation is subject to the same due process standards that apply to that process under these Rules.
- (4) 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 27**

### **Emergency Mediation**

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- (1) Under the Project Mediation, a party or the parties jointly can also initiate emergency mediation, in case of exceptional urgency, to resolve a dispute.
- (2) 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.
- (3) 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.

APCAM MEDIATION RULES  
SECTION 4 | RULE 28

- (4) The mediator shall strive to complete the emergency mediation within a period of 7 days, but the parties are free to extend the time frame, if so required.

**Rule 28**

**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.



APCAM MEDIATION RULES  
SECTION 5

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**Section 5**  
**SCHEDULES**

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APCAM MEDIATION RULES  
SECTION 5

## **Schedule-1 DEFINITIONS**

In this Rules, unless the context otherwise requires —

- (a) “Administrator” means the APCAM official assigned under these Rules who shall perform all the functions to be done by APCAM 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) “AMA Procedure” means a hybrid procedure of Arbitration-Mediation-Arbitration Procedure under the APCAM Arbitration Rules, where a party submits disputes for resolution for arbitration under the APCAM “Arb-Med-Arb Clause” or “AMA Clause”.
- (d) “Code of Conduct” means the Code of Conduct for Professional Mediation Practice to be observed by a Mediator as under these Rules.
- (e) “Conduct Assessment” means the Mediator’s Conduct Assessment based on a complaint received against a mediator, as described under these Rules.

- (f) “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.
- (g) “Digital Administrator” or “ODR Administrator” means the entity that carries out such administration and coordination of an online negotiation, mediation or ODR in an agreed digital platform.
- (h) “Hotline Hub” means a chat-platform consisting of the parties to the contract and the Project Mediator, when the parties choose Project mediation.
- (i) “International mediation” or “Cross-border mediation” means a mediation if —
  - (1) The parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or
  - (2) The parties agree that the mediation is international; or
  - (3) The State in which the parties have their places of business is different from either:
    - (i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or
    - (ii) The State with which the subject matter of the dispute is most closely connected.

Explanation — For the purposes of above —

- (i) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;
  - (ii) If a party does not have a place of business, reference is to be made to the party's habitual residence.
- (j) “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.

- (k) “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.
- (l) “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.

- (m) “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.

- (n) “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.

- (o) “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, or any third party who attend mediation proceedings.

APCAM MEDIATION RULES  
SECTION 5 | SCHEDULE 1

- (p) “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.
- (q) “Online Mediation” means mediation initiated and/or conducted as an ODR mechanism, conducted using the electronic platform as agreed by the parties.
- (r) “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.
- (s) “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 the initiating party initiates the process of mediation under these Rules.

- (t) “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 4.
- (u) “Registrar” means the APCAM official assigned under these Rules who shall perform all the functions to be done by APCAM, as delegated by the Administrator.



## **Schedule-2**

### **APCAM MEDIATORS' 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 APCAM 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 APCAM on the Mediators' conduct Assessment.

The Mediators under the APCAM Panel are required to make known to users that the Code governs their professional mediation practice.

For the purposes of this Code, Mediation 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**

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##### **(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 APCAM website 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 APCAM website, 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**

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**(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, either formally or informally, any 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**

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#### **(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 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.

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SECTION 5 | SCHEDULE 2

- (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 APCAM. The feedback shall remain confidential and shall be used for preparing the Feedback Digest by the Reviewer as per guidelines given by APCAM, to be used in the Mediator's profile.

**(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**

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- (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) Provided that information which has been disclosed as confidential in clause (a) 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.

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SECTION 5 | SCHEDULE 2

- (c) 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.
- (d) 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.
- (e) 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**

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- (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 APCAM 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 APCAM 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.



### **Schedule-3 APCAM MEDIATORS' CONDUCT ASSESSMENT PROCESS**

The principles of diligence, independence, neutrality, impartiality, fairness and integrity are vital to the mediation process, and are set out in APCAM Mediators' Code of Professional Conduct. Users of mediation services are entitled to trust that APCAM empanelled Mediators adhere rigorously to these basic principles. In the unlikely event of a failure by an APCAM Mediator to observe the APCAM Code, a Party to the mediation conducted by an APCAM 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 APCAM Mediator's non-compliance with the APCAM 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**

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A Party in a mediation who believes that an APCAM 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**

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- (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 APCAM. APCAM 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 APCAM and intimated to the Party.
- (c) After having received an admissible Application, APCAM shall promptly appoint a Professional Conduct Assessor being an independent lawyer, retired Judge or other APCAM 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

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SECTION 5 | SCHEDULE 3

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 APCAM. 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 APCAM Mediator for up to one year.
  - (v) Permanently withdraw the mediator from APCAM 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 APCAM 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
  - ◆ APCAM.
- (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) APCAM 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 APCAM.
- (d) Any challenge by the Party or Mediator must be presented to APCAM 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 APCAM 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**

APCAM 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.



**Schedule-4**  
**APCAM INTERNATIONAL**  
**MEDIATION FEE SCHEDULE**

**REGISTRATION CHARGES**

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**Filing Fee:**

€ 350.00

**MEDIATOR FEE**

(Per Mediator)

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Quantum of Claim (In Euro)	Mediator Fee (In Euro)	Mediator Category
Up to 50,000.00	Per session: 250.00 Total Fee: 1750.00	AAM
	Per session: 350.00 Total Fee: 2450.00	ACM
	Per session: 450.00 Total Fee: 3150.00	AICM
From 50,001.00 to 250,000.00	Per session: 400.00 Total Fee: 2800.00	AAM
	Per session: 500.00 Total Fee: 3500.00	ACM
	Per session: 600.00 Total Fee: 4200.00	AICM
From 250,001.00 to 1,000,000.00	Per session: 1000.00 Total Fee: 7000.00	AAM
	Per session: 1100.00 Total Fee: 7700.00	ACM
	Per session: 1200.00 Total Fee: 8400.00	AICM

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Quantum of Claim (In US\$)	Mediator Fee (In US\$)	Mediator Category
From 1,000,001.00 to 5,000,000.00	Per session: 1500.00 Total Fee: 10,500.00	ACM
	Per session: 1650.00 Total Fee: 11,550.00	AICM
More than 5,000,000.00	Per session: 1800.00 Total Fee: 12,600.00	ACM
	Per session: 2000.00 Total Fee: 14,000.00	AICM
If the dispute cannot be quantified	Per session: 1000.00 Total Fee: 7000.00	AAM
	Per session: 1100.00 Total Fee: 7700.00	ACM
	Per session: 1200.00 Total Fee: 8400.00	AICM
<ul style="list-style-type: none"> <li>• One session - 3 hours or part thereof</li> <li>• Session includes mediation session and pre-mediation conference.</li> <li>• If the mediation extends to more than 10 sessions, an additional fee of 25% is payable and if the mediation extends to more than 20 sessions, an additional 50% is payable, as the total fee.</li> <li>• For Payment Schedule, see below</li> </ul>		

\* The mediator fee will be the same for for online mediation, deal mediation and project mediation.

### Project Mediation Retainer Fees

(On appointment of Project Mediator)

Project value Up to €500,000.00:

ACM	€ 750.00
AICA	€ 1000.00

Project value more than €500,000.00:

ACA	€ 1750.00
AICA	€ 2500.00

\* The retainer fee will be applicable for retainership of the mediator during the project and normal meetings, if any. For mediations conducted under the Project mediation, the regular mediation fee schedule shall apply.

### **Travel, Boarding & Lodging for Mediators**

Local Sitting: Travelling allowance of €75.00 per sitting.

Outstation Sitting: Actuals by Air and out-of-pocket expenses at actuals for boarding, lodging and local transport subject to maximum of €350.00 per day.

### **APCAM ADMINISTRATIVE FEE**

Quantum of Claim (In Euro)	Administrative Fee (In Euro)
Up to 50,000.00	Per session: 125.00 Total Fee: 875.00
From 50,001.00 to 250,000.00	Per session: 175.00 Total Fee: 1225.00
From 250,001.00 to 1,000,000.00	Per session: 435.00 Total Fee: 3045.00
From 1,000,001.00 to 5,000,000.00	Per session: 615.00 Total Fee: 4300.00
More than 5,000,000.00	Per session: 700.00 Total Fee: 4900.00
If the dispute cannot be quantified	Per session: 435.00 Total Fee: 3045.00

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- One session - 3 hours or part thereof
- Session includes mediation session and pre-mediation conference.
- If the mediation extends to more than 10 sessions, an additional fee of 25% is payable and if the mediation extends to more than 20 sessions, an additional 50% is payable, as the total fee.
- For Payment Schedule, see below

\* The administrative fee will be the same for online mediation, deal mediation and project mediation.

### **Project Mediation Administrative Fees**

(On appointment of Project Mediator)

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Project value Up to €500,000.00:

€ 500.00

Project value more than €500,000.00:

€ 1250.00

\* The Administrative fee will be applicable for retainership of the institution during the project and normal meetings, if any. For mediations conducted under the Project mediation, the regular administrative fee schedule shall apply.

### **FEE PAYMENT SCHEDULE**

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#### **Registration Charges**

To be paid by the Initiating Party at the time of filing of Request.

### **Mediator & Administrative Fee**

Once the mediator is appointed, the initiating party shall make a deposit of 2 sessions of mediator fee and administrative fee. If the mediation is abandoned due to the absence of the opposite party or due to non-agreement in the first session itself, the balance amount will be refunded to the initiating party.

After the first session, both parties shall always keep a deposit of mediator and administrative fee of 2 sessions in advance. After the conclusion of the mediation, the amount will be settled.

### **Rentals of Conference Rooms**

The parties shall also pay rentals for the conference rooms and miscellaneous charges as fixed by the centre.



## **Schedule-5 RECOMMENDED CLAUSES**

### **FUTURE DISPUTES**

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Parties to a contract who wish to have any future disputes referred to mediation under the APCAM 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 in accordance with the APCAM Mediation Rules.”

#### **Suggested Med-Arb Clause**

“Any dispute, difference or controversy arising out of or in connection with this contract shall first be referred to mediation at the Asia-Pacific Centre for Arbitration & Mediation (“APCAM”) and in accordance with its then current Mediation Rules (“APCAM Mediation Rules”). If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute, difference or controversy shall be referred to and determined by arbitration as per the applicable arbitration law of the seat of arbitration by APCAM in accordance with its Arbitration Rules”.

## **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 by an online platform and in case of failure to resolve the dispute or difference shall refer the same to online mediation at the Asia-Pacific Centre for Arbitration & Mediation (“APCAM”) 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 either online or offline arbitration by APCAM in accordance with its Arbitration Rules and in accordance with the applicable arbitration law of the seat of arbitration.”

\* The parties may wish to consider adding —

- The number of arbitrators;
- The seat and venue of arbitration;
- The seat and venue of mediation;
- The law applicable for arbitration;
- The language of arbitration.

## **PROJECT MEDIATION**

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Parties to a contract who wish to include Project mediation in their contract under the APCAM 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 APCAM Mediation Rules, who would assist the parties to resolve

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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.

**APPLICABILITY OF APCAM MEDIATION RULES  
IN MEDIATION ARISING OUT OF OTHER  
MEDIATION CLAUSES**

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Where any agreement, submission or reference provides for arbitration by any of the constituent member institutes of the Asia-Pacific Centre for Arbitration & Mediation (“APCAM”), and if such institution provides under their Rules that international or cross-border disputes would be governed by APCAM Mediation Rules, then such international or cross-border disputes shall be conducted in accordance with the APCAM Mediation Rules, including the APCAM Mediation Fee Schedule.



Mediation Rules of the  
**Asia-Pacific Centre for Arbitration & Mediation**

For more details:  
Email: [info@apcam.asia](mailto:info@apcam.asia)  
[www.apcam.asia](http://www.apcam.asia)