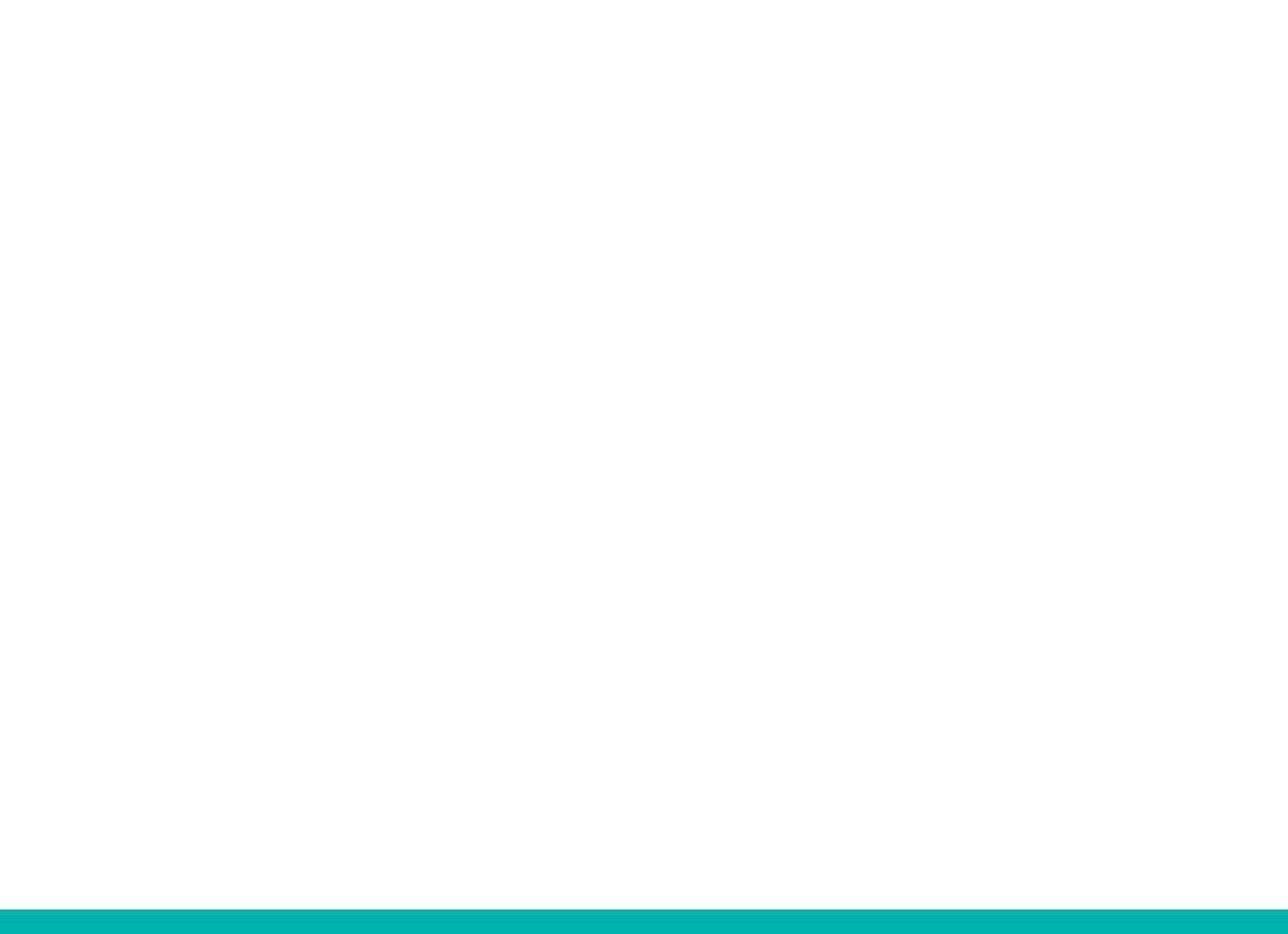




ASSOCIATION OF
MEDIATION
PRACTITIONERS

ASSOCIATION OF MEDIATION PRACTITIONERS | **RULES 2018**



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Objective

The principal object of the Association is to facilitate Mediation/Conciliation by providing Mediation/Conciliation services, as also Evaluation, be it in relation to private or public disputes or court annexed cases, as may be sought by the Parties to a dispute or by its connected stake-holders.

01 Title

These Rules shall be referred to as 'AMP Rules of Mediation and Conciliation 2018'.

02 Definitions

In these Rules, unless the context otherwise requires:

- 2.1 "Agreement for Mediation/Conciliation" shall mean the agreement submitted to the Association duly completed and signed by all the Parties agreeing to refer their dispute for resolution as per these Rules. The expression shall include all further Agreements for Mediation/Conciliation for inclusion of additional Parties and/or stake-holders, signed by all existing as well as newly added persons/entities;
- 2.2 "Association" means 'The Association of Mediation Practitioners', also referred to as 'AMP' in the alternative;

- 2.3** "Conciliation" shall have the same meaning as 'Mediation' as far as the core values of the mediation process are concerned, including Party autonomy, Party self-determination, the difference being only in the demeanour of the neutral independent person as to whether he seeks to focus on the Parties or on the issues (and incidentally suggests some non-binding terms of settlement) or on both;

Explanation: For the purpose of enforcement of a 'Mediated Settlement Agreement' (MSA), all disputes falling within the definition of 'Conciliation' shall, on settlement thereof be deemed to have been settled under Part III of the Arbitration and Conciliation Act, 1996, irrespective of the nomenclature or demeanour of the independent person;

- 2.4** "Conciliator" shall have the same meaning as the expression 'Mediator', restricted only by, and to the defined extent of, any specific law which may in future determine that he be treated differently for any specific purpose;
- 2.5** "Invitation to Mediate/Conciliate" (hereinafter also referred to as "ITM") means the communication initiated by the Association addressed to Parties seeking their consent to participate in a mediation/conciliation process, with the other Parties mentioned therein;

- 2.6** “Mediated Settlement Agreement” or “Conciliated Settlement Agreement” means a settlement arrived at between the Parties in the course of or as a result of Mediation/Conciliation;
- 2.7** “Mediation” means a Party-centric process where a neutral or mutually partial person assists the disputants in reaching a settlement by self-determination through a confidential process, be it purely facilitative or partly evaluative. Reference to ‘Mediation’ in these Rules shall signify a reference to ‘Conciliation’ where the dispute falls within the ambit of Section 61 of the Arbitration and Conciliation Act, 1996;
- 2.8** “Mediator” is a person mutually agreeable to all the Parties and other stake-holders in the dispute in which he is appointed as a neutral and is synonymous with the term ‘Conciliator’. A ‘Mediator’ assists the Parties in arriving at a resolution on mutually agreed terms through their respective self-determination. Reference to ‘Mediator’ in these Rules shall signify a reference to ‘Conciliator’ where the dispute falls within the ambit of Section 61 of the Arbitration and Conciliation Act, 1996;
- 2.9** “Panel of Mediators” means a panel of those members of the Association who have been elected to be empanelled as Mediator;

- 2.10** "Party" or "Parties" shall mean person(s) or entity(ies) or both in dispute / conflict with each other as the context may require;
- 2.11** "Registration Fee" means the fee payable to the Association as specified in the Schedule of Fees as determined and communicated by the Association;
- 2.12** "Request for Mediation/Conciliation" (hereinafter also referred to as "RFM") means a letter submitted to the Association requesting for mediation/conciliation pursuant to Rule 4.1(a);
- 2.13** "Rules" means these rules, along with all the forms, annexures and schedules connected herewith;
- 2.14** "Schedule of Fees" shall mean the fee schedule as determined and communicated by the Association.

03 Application of the Rules

These Rules shall apply to all those mediations/conciliations, where the Parties have agreed to refer their disputes to Mediation or Conciliation according to these Rules or have

been directed to the Association for the said purpose by any arbitrator, arbitral tribunal or judicial or quasi-judicial body, specifically or by general direction/order/resolution.

04 Commencement of Mediation Proceedings

- 4.1.A Any Party desirous of initiating the mediation process under these Rules shall approach the Association and submit a Request for Mediation ("RFM") containing the contents as prescribed in the 'Schedule' hereto along with the payment of the prescribed Registration Fee.
- 4.1.B Where Parties have agreed to refer their dispute, or whose dispute has been referred by any arbitrator, arbitral tribunal or judicial or quasi-judicial body, for resolution as per these Rules, they shall forthwith submit to the Association, the duly completed Agreement for Mediation/Conciliation along with the requisite Registration Fee.
- 4.2 Upon receipt of the RFM, the Association shall invite the Parties to agree to participate in the mediation process under these Rules by way of an 'Invitation to Mediate' ("ITM") along with a copy of the RFM received by the Association.

- 4.3 Where acceptance to mediate is received only from some, but not all, of the other Parties, mediation proceedings may, at the option of the Party submitting the RFM, be commenced with only such Party or Parties that have sent the acceptance to mediate.
- 4.4 As regards the other Party or Parties who reject the ITM, there will be no mediation proceedings with such Party or Parties.
- 4.5 If the Association does not receive a reply within 30 (thirty) days from the date on which the ITM is received by the other Parties, or within such other period of time as may be allowed by the Association, the Association shall intimate the RFM Applicant, who may elect to treat it as a rejection of the ITM. If it so elects, it shall accordingly inform the Association and the other Party or Parties.

05 Number of Mediators

- 5.1 There shall be one Mediator for every mediation conducted under these Rules, unless the Parties have agreed otherwise.

- 5.2** In appropriate cases, the Association or the appointed Mediator may, at any stage, propose to the Parties to have more than one Mediator. Reference to “Mediator” under these Rules shall then be deemed as reference to “Mediators”.
- 5.3** Where there is more than one Mediator, as a general rule, they shall act jointly. This, however, will not take away their control of the process in the course of which they may choose to separately meet the different Parties, their representatives, or other stake-holders, and to share amongst themselves their respective interactions thereafter.

06 Appointment of Mediators

- 6.1** The Parties are free to select and appoint any person/s from the Panel of Mediators of the Association to act as a Mediator.
- 6.2** The Parties shall, within 7 days of commencement, intimate to the Association and the Mediator, the name of the Mediator jointly appointed by them.
- 6.3** In the event the Parties are unable to jointly appoint the Mediator, or unanimously

so request, the Association shall appoint the Mediator with intimation to the Parties.

- 6.4 In the event of a mediation with two or more Mediators, the same appointment procedure shall apply as in the case of one Mediator.
- 6.5 Before conducting the first mediation meeting, the Mediator shall make a written declaration to the Association with a copy to the Parties of his or her acceptance, availability, impartiality and independence.
- 6.6 If, following the appointment, a Mediator becomes aware of any circumstances that may create a reasonable perception of bias, partiality or lack of neutrality, the Mediator shall immediately so inform the Parties and the Association in writing. In such an event, the mandate of the Mediator shall terminate and unless the Parties are able to agree on a substitute Mediator within 15 (fifteen) days of such termination, the Association shall appoint a substitute Mediator with intimation to the Parties. The unpaid fees of the erstwhile Mediator shall be forthwith paid, before proceeding further with the mediation process.
- 6.7 Each Mediator's fees shall be as per the Schedule of Fees communicated by the Association, and it shall be agreed upon between the Parties and the Mediator before appointment, with intimation to the Association. Such fees, and any other costs of the Mediation, shall be shared equally by the Parties, unless agreed

otherwise with intimation to the Association. If a Party withdraws from a multi-Party Mediation but the Mediation continues, the withdrawing Party will not be responsible for any costs incurred after it has notified the Mediator and the other Parties of its withdrawal. Such fees, and any other costs of the mediation, shall thereafter be shared equally by the remaining Parties.

Provided however, it shall be open to the Mediator to reduce the fee if he / she deems it fit, but in any event, the Mediator shall not charge the Parties, more than the fees indicated in the Schedule of Fees.

07 Submission of Statements to Mediator

- 7.1** On appointment, the Mediator shall convene private sessions with each Party or joint sessions of all Parties as he considers appropriate. For the purpose of communication, he may initially inform all Parties and stake-holders at the email addresses supplied to him by the Association as on record with it. However, he shall update his records as per the details provided by all Parties in the course of further interactions and also intimate the Association accordingly.

- 7.2** The Mediator may request each Party to submit to him, a brief written statement describing the general nature of the dispute and the points at issue. Each Party shall also send a copy of such statement to the other Party.
- 7.3** The Mediator may request each Party to submit to him, a further written statement of its position and the facts and grounds in support thereof supplemented by any documents and other evidence that such Party deems appropriate. Each Party shall also send a copy of such statement, documents and other evidence to the other Party. Where, however, there be any document, statement, evidence or other material which any Party may want to be held in confidence between itself and the Mediator, it shall intimate the Mediator accordingly in writing at the time of sharing the same with the Mediator.
- 7.4** At any stage of the mediation process, the Mediator may request a Party to submit to him, such additional information as he deems appropriate, which too shall, at the submitting Party's written request, be held in confidence.

08 Representation and Assistance

- 8.1 All Parties are expected to be present and participate in person for all the joint mediation sessions as also such private sessions as they are requested. Parties other than natural persons are expected to depute a partner, an officer, or other employee who is authorized to remain present during the mediation and to make decisions concerning the resolution of the dispute.
- 8.2 Each Party to the mediation must have authority to settle the dispute or be represented by a person or persons having full authority to settle the dispute. Each Party shall confirm such authority in writing to the Association in the manner acceptable and shall keep updated the Association and all other Parties of any change of the authorized representative(s) along with appropriate documentation.
- 8.3 Parties are entitled to have the assistance of their advocate, who may accompany them to the joint mediation sessions and assist them as advisors. However, the Parties are expected to participate themselves in the mediation process.
- 8.4 No persons other than the Parties, the stake-holders, their representatives, their advisors, and the Mediator may attend the mediation, save with the permission of

the Parties and the Mediator.

- 8.5 The Mediator may request for permission of all the Parties and/or their representatives and thereupon allow a trainee, associate or mediator of the Association as an observer to attend their mediation process or any session thereof for academic purposes.
- 8.6 Any Mediated Settlement Agreement reached during the mediation shall not be legally binding, unless it is reduced to writing and signed by all Parties to the settlement agreement or by their authorised representatives, as well as the Mediator.

09 Role of Mediator

- 9.1 The Mediator shall assist the Parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- 9.2 The Mediator will be guided by principles of objectivity, fairness and justice, giving consideration to, amongst other things, the rights and obligations of the Parties, the usages of the trade concerned and the circumstances surrounding the dispute,

including any previous business practices between the Parties.

- 9.3** The Mediator may conduct the mediation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case and the wishes that the Parties may express.
- 9.4** The Mediator is not a legal representative of any Party and has no fiduciary duty to any Party. It is not the role of the Mediator to give legal advice. The Parties should obtain their own advice concerning their situation, their dispute, the mediation process and any contemplated agreement.

10 Evaluation

If the Parties so desire, they may apply to the Association for availing the services of 'Case Evaluation' at any time before, during or after the mediation proceedings, and the Association shall appoint a 'Neutral Evaluator' to render such services for a fee as communicated by the Association.

Explanation: "Neutral Evaluation" means a procedure in which a third-Party neutral provides an assessment of the positions of the Parties. In a neutral evaluation process, advocates

and/or Parties present summaries of the facts, evidence and legal principles applicable to their cases to a single neutral or a panel of neutral evaluators who then provide(s) an assessment of the strengths, weaknesses and potential value of the case to all Parties.

11 Administrative Assistance

- 11.1** In order to facilitate the conduct of the mediation proceedings, the Parties, or the Mediator with the consent of the Parties, may request for administrative assistance from the Association.
- 11.2** Unless otherwise agreed by the Parties with prior intimation to the Association, all of the Association's administrative fees and expenses, will be divided equally between or amongst the Parties to the mediation.

12 Communication Between Mediator and Parties

- 12.1 The Mediator may, at such stages as he may consider appropriate, invite any of the Parties (with or without representatives) to meet him. Any of the Parties may communicate with him orally or in writing.
- 12.2 Unless the Parties have agreed upon the place where meetings with the Mediator are to be held, such place will be determined by the Mediator, after consultation with the Parties, having regard to the circumstances of the mediation proceedings.

13 Mediator not bound by certain Enactments

The Mediator is not bound by the Code of Civil Procedure, 1908 and the Evidence Act, 1872.

14 Disclosure of Information

When the Mediator receives factual information concerning the dispute from a Party, he discloses the substance of that information to the other Party in order that the other Party may have the opportunity to present any explanation which he considers appropriate. However, when a Party gives any information to the Mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other Party.

15 Co-operation of Parties with Mediator

- 15.1** The Parties shall, in good faith, co-operate with the Mediator to advance the process of mediation as expeditiously as possible, and in particular, endeavour to comply with requests by the Mediator to share with him/her in confidence, such written material and other information and/or documents which may help to facilitate the expedition of the mediation process. The Parties shall also attend the joint and private meetings as may be called by the Mediator from time to time in a timely manner.

- 15.2** A Party may request a private meeting with the Mediator at any time and the Mediator shall meet such request as soon as he considers it appropriate.

16 Suggestions by Parties for Settlement of Dispute

Each Party may, on his own initiative or at the invitation of the Mediator, submit to the Mediator, suggestions for settlement of the dispute.

17 Settlement Agreement

- 17.1** Where the Parties reach an agreement on the terms of settlement of the dispute, they may draw up and sign a Mediated Settlement Agreement, which shall then be also signed by the Mediator. If requested by the Parties, the Mediator may assist the Parties in drawing up the Mediated Settlement Agreement.

- 17.2** When Parties sign the Mediated Settlement Agreement, it shall be final and binding on the Parties and persons claiming under them respectively.
- 17.3** The Mediated Settlement Agreement in a dispute falling within Section 61 of the Arbitration and Conciliation Act, 1996 shall have the same status and effect as if it is an award on the agreed terms as provided in Section 74 of the said Act.
- 17.4** For the avoidance of doubt, a Mediated Settlement Agreement may take the form of an electronic record, and it may be signed by electronic signature.
- 17.5** Where any Mediated Settlement Agreement has been reached, the Mediator shall promptly notify the Association of the same.
- 17.6** In the event of any perception of confusion arising with regard to any part of the Mediated Settlement Agreement arrived at between the Parties, the same shall be referred to an extended mediation process under these Rules, preferably before the same Mediator.

18 Confidentiality

- 18.1 Notwithstanding anything contained in any other law for the time being in force, the Mediator and the Parties shall keep confidential, all matters relating to the mediation proceedings. Confidentiality shall extend also to the Mediated Settlement Agreement, except where its disclosure is necessary in law or for purposes of implementation and enforcement.
- 18.2 Information shared by a Party in private caucus meetings with the Mediator shall be kept private and confidential unless the Party providing such information consents to its disclosure to any other Party.
- 18.3 There shall be no formal record or transcript of the mediation process.
- 18.4 No person other than the Parties, the stake-holders, their representatives, their advisors, and the Mediator may attend the mediation sessions, save and except with the permission of the Parties and the Mediator.
- 18.5 Each Party shall be responsible for ensuring that all of its representatives and advisors are bound by appropriate undertakings of confidentiality and shall take

appropriate measures to limit the dissemination of any information relating to the mediation only to those persons as may be required for the purposes of the mediation.

19 Termination and/or Suspension of Mediation Proceedings

- 19.1** The mediation proceedings shall be terminated:
 - 19.1.1** by the signing of the Mediated Settlement Agreement by the Parties and the Mediator; or
 - 19.1.2** by a written declaration of the Mediator, after consultation with the Parties, to the effect that further efforts at mediation are no longer justified or necessary; or
 - 19.1.3** by a written declaration of the Parties addressed to the Mediator to the effect that the mediation proceedings are terminated; or
 - 19.1.4** by a written declaration of a Party to the other Party and the Mediator, if appointed,

to the effect that the mediation proceedings are terminated; or

- 19.1.5** by a written declaration from the Association to the effect that the mediation proceedings are deemed to have been terminated or abandoned due to the required stipulations under these Rules and guidelines, if any, not having been adhered to, or that the time limit set for the mediation proceedings, including any extensions thereof, has expired,

on the date of signing such agreement or on the date of such declaration.

20 Suspension, Termination or Withdrawal by the Mediator

- 20.1** The Mediator may suspend, terminate or withdraw mediation proceedings should he/she believe that the circumstances so require and shall forthwith notify the Parties and the Association accordingly.
- 20.2** When the Mediator determines that it is necessary to suspend or terminate a Mediation or to withdraw from it, the Mediator shall do so without violating the

obligation of confidentiality and in a manner, that will cause the least possible harm to the Parties.

- 20.3** The Mediator may also adjourn the mediation in order to allow Parties to consider specific options/proposals or to give further information or for any other reason that the Mediator considers helpful in furthering the mediation process. The mediation will then reconvene on the adjourned date.

21 Costs

- 21.1** Upon commencement of the mediation proceedings, the Mediator shall fix the costs of the mediation as per the Schedule of Fees and give written notice thereof to the Parties, as well as to the Association
- 21.2** The expression "costs" shall include:
 - 21.2.1** Registration Fee payable to the Association;
 - 21.2.2** fees of the Mediator which shall be as per the Schedule of Fees communicated by the Association;

- 21.2.3 travel and other expenses of the Mediator;
 - 21.2.4 travel and other expenses of witnesses requested by the Mediator with the consent of the Parties;
 - 21.2.5 cost of any expert advice requested by the Mediator with the consent of the Parties;
 - 21.2.6 any other expenses incurred in connection with the mediation proceedings and the Mediated Settlement Agreement.
- 21.3 The costs, as defined above, shall be borne by the Parties equally, unless the Agreement for Mediation/Conciliation provides for a different apportionment.
- 21.4 All other expenses incurred by a Party shall be borne by that Party alone.

22 Deposits

- 22.1 The Mediator, upon his/her appointment, may request each Party to deposit in equal shares an amount as an advance for the costs referred to in Rule 21 above which

he/she expects may be incurred.

- 22.2** During the course of the mediation proceedings, the Mediator may request for supplementary deposits by the Parties in equal shares.
- 22.3** If the deposits under Rule 22.1 and 22.2 are not paid in full by the Parties within 30 (thirty) days, unless any other Party or stake-holder opts thereafter to tender and pay the same [unequivocally] to the Mediator, the Mediator may suspend the proceedings or may make a written declaration of termination of the proceedings effective on the date of such declaration, by communicating the same to the Parties and to the Association.
- 22.4** Upon termination of the mediation proceedings, the Mediator shall render an account to the Parties of the deposits received and shall return any unexpended balance to the Parties.

23 Role of the Mediator in Other Proceedings

- 23.1** The Mediator shall not act as an arbitrator, judge, expert, witness, representative,

counsel or advocate or in any other 'neutral' capacity in any arbitral, judicial, quasi-judicial or adjudicatory proceedings in respect of the dispute which is the subject matter of the mediation proceedings, or any other connected dispute involving some or all of the Parties in the mediation proceedings in which he or she acted as the Mediator.

- 23.2** The Mediator also undertakes to refrain from appearing as a witness or giving testimony of what transpired during the mediation proceedings in any judicial, quasi-judicial, arbitral or adjudicatory proceedings.
- 23.3** The Mediator shall not be summoned by the Parties as a witness in any arbitral or judicial or quasi-judicial or adjudicatory proceedings.

24 Admissibility of Evidence in Other Proceedings

- 24.1** The Parties undertake not to disclose, rely on or produce the following as evidence in any existing or future arbitral, judicial, quasi-judicial or similar adjudicatory

proceedings, whether or not such proceedings relate to the dispute that is the subject of the mediation proceedings:

- 24.1.1 any deed, document or writing (including electronic records) provided by any Party or the Mediator during the mediation proceedings save and except for those which would, in any event, be discoverable and admissible in pending or future arbitral, judicial, quasi-judicial or similar adjudicatory proceedings;
- 24.1.2 views expressed or suggestions made during the mediation proceedings by the other Party in respect of the dispute or a possible settlement of the dispute;
- 24.1.3 admissions made by the other Party in the course of the mediation proceedings;
- 24.1.4 views or options or proposals made by the Mediator during the mediation proceedings;
- 24.1.5 the fact that the other Party had indicated its willingness to accept an option or proposal for settlement made by the Mediator.

25 Vacancies

If any Mediator shall become unwilling or unable to serve, the Association will appoint another Mediator in written or oral consultation with the Parties and/or their legal representatives.

26 Date, Time and Place of the Mediation

The Mediator will fix the date and the time of each mediation session. The mediation will be held at the office of the Mediator if possible, or at such other place as the Mediator may decide after considering the views of the Parties.

27 Waiver of Liability

27.1 The Mediator will not be liable to the Parties for an act or omission in connection

with the mediation service provided by him, unless the act or omission is fraudulent or involves negligence or misconduct.

- 27.2** The Association will not be liable to the Parties for an act or omission in connection with the services provided by the Mediator or in relation to the mediation.
- 27.3** No claim shall lie against the Mediator(s) and/or the Association, or its officers or employees for any matter in connection with or in relation to:
 - 27.3.1** the mediation proceedings; and/or
 - 27.3.2** the services provided by the Mediator(s); and/or
 - 27.3.3** the Association; and/or
 - 27.3.4** the dispute between the Parties.

28 Exclusion of Liability

The Parties jointly and severally release, discharge and indemnify the Mediator and the Association in respect of all liabilities whatsoever, whether involving negligence or not, for

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 or dishonesty.

29 Registration Fee

- 29.1 The Request for Mediation/Conciliation shall be subject to payment to the Association of the Registration Fee, the amount of which shall be communicated by the Association along with the Schedule of Fees as applicable on the date of the Request for Mediation/Conciliation.
- 29.2 The Registration Fee shall not be refundable.
- 29.3 No action will be taken by the Association on a Request for Mediation/Conciliation until the Registration Fee is paid.
- 29.4 If the Applicant which has filed a Request for Mediation/Conciliation fails, within 15 (fifteen) days after a reminder in writing from the Association to pay the Registration Fee, it shall be deemed to have withdrawn it.

30 Fees of the Mediator

The amount of the fees of the Mediator shall, unless the Parties and the Mediator agree otherwise, be calculated on hourly basis or, if applicable, at the daily rate or a lump sum as set out in the Schedule of Fees communicated by the Association and applicable on the date of the Request for Mediation/Conciliation taking into account the amount in dispute, the complexity of the subject matter of the dispute and any other relevant circumstances of the case.

31 Consequences of Non-Attendance of Parties

If a Party fails to attend a session or a meeting fixed by the Mediator deliberately or wilfully on two or more occasions, the Mediator may report the matter to the Association and the mediation proceedings may then be deemed to have failed. In such a case, the defaulting Party shall not be entitled to refund of any amounts deposited by it.

32 Immunity

Notwithstanding anything contained in any other law for the time being in force, no civil or criminal proceedings shall lie against any person, who is or was a Mediator appointed by the Association, for any act, thing or word committed, done or spoken by him, when, or in the course of, acting or purporting to act in the discharge of his functions as a Mediator, nor shall such a person be liable to be summoned by any Party to any legal proceedings to appear in a court of law or before any arbitral tribunal or any judicial / quasi-judicial proceedings to testify in regard to information received by him/her or action taken by him/her or in respect of drafts or records prepared by him/her or shown to him/her during the mediation proceedings.

Schedule

Matters to be included in the Request for Mediation (RFM)

- A** The names, addresses (including e-mail addresses), telephone numbers of all the Parties and, where available, their legal representatives;
- B** A copy of the agreement containing a mediation/conciliation clause or a copy of a separate mediation agreement, if any;
- C** A reference to the contract (if any) or other legal relationship (if any) out of or in relation to which the dispute arises;
- D** Agreements (if any) as to any time limits.

For the latest version of the rules, please visit:

www.amp-mediation.com/rules.html

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