

# **Rules of Mediation of the Bahrain Chamber for Dispute Resolution effective 1 July 2019**

## **Contents**

|  |                                   |    |
|--|-----------------------------------|----|
| Article 1  | Scope                             | 3  |
| Article 2  | Commencing mediation              | 3  |
| Article 3  | Date of commencement              | 5  |
| Article 4  | Appointment of a mediator         | 5  |
| Article 5  | Replacement of a mediator         | 7  |
| Article 6  | Conduct of the mediation          | 8  |
| Article 7  | Privacy and confidentiality       | 9  |
| Article 8  | Case management fee               | 10 |
| Article 9  | Fees and expenses of the mediator | 10 |
| Article 10   | Conclusion of the mediation       | 11 |
| Article 11   | Other proceedings                 | 12 |
| Article 12   | Limitation of liability           | 12 |
| <b>Appendix I – Fee Schedule effective 1 July 2019</b> |                                   | 13 |
| Administrative fees                                    |                                   | 13 |
| Filing Fee   |                                   | 13 |
| Case Management Fee                                    |                                   | 14 |
| Fees and expenses of the mediator                      |                                   | 15 |
| Advances on costs                                      |                                   | 16 |
| Disputes   |                                   | 16 |
| <b>Appendix II – Model Clauses</b>                     |                                   | 17 |



## **Mediation Rules**

### **Article 1**

#### **Scope**

- 1.1 Where parties have agreed in writing (whether before or after a dispute has arisen) to mediate a dispute under the rules of mediation of the Bahrain Chamber for Dispute Resolution, or BCDR, or BCDR-AAA (the “Chamber”), or have provided for the mediation of a dispute by the Chamber without designating particular rules, the mediation shall, subject to Article 1.3, take place in accordance with these rules, as they may have been amended by the Chamber to take effect before the date of commencement of the mediation (the “Rules”). The Rules include the Fee Schedule as may be separately amended from time to time by the Chamber.
- 1.2 The Chamber shall be the administrator of such mediations.
- 1.3 An agreement to mediate made pursuant to Article 1.1 shall be deemed void if the subject matter of the dispute is not capable of settlement by mediation under any applicable law.

### **Article 2**

#### **Commencing mediation**

- 2.1 Where there is an existing agreement to mediate the dispute under the Rules, and the mediation is being commenced by all parties to the agreement, the parties shall submit to the Chamber a written Request for Mediation (the “Request for Mediation”), which shall include, or be accompanied by:

- (a) a copy of the parties' agreement to mediate;
- (b) the name, postal address, e-mail address and telephone number of each party to the mediation and of its legal representative, if any;
- (c) one or more statements summarizing the nature and circumstances of the dispute and the value of any monetary claim;
- (d) either the name, postal address, e-mail address and, if known, telephone number of the mediator nominated by the parties, or, if the parties have not agreed on a nomination, a statement of any specific attributes the parties consider that the mediator should possess; and
- (e) the filing fee prescribed by the Fee Schedule (the "Filing Fee").

2.2 Where there is an existing agreement to mediate the dispute under the Rules, and the mediation is being commenced by one or some of the parties to the agreement, the party or parties wishing to commence mediation shall submit to the Chamber, and at the same time to all the other parties to the mediation, a Request for Mediation conforming to the provisions of Article 2.1, save that:

- (a) Article 2.1(b) shall be read as providing for the contact details of the party or parties wishing to initiate the mediation and such of the contact details of each other party and its legal representative as are known to the party or parties wishing to commence mediation; and
- (b) Article 2.1(d) shall be read as referring to any nomination or statement of attributes made only by the party or parties wishing to commence mediation.

- 2.3 Where there is no existing agreement to mediate the dispute under the Rules, the party or parties wishing to commence mediation shall submit to the Chamber, and at the same time to all the other parties that it wishes to engage in the mediation, a Request for Mediation conforming to the provisions of Article 2.2, together with an express written request that each other party advises the party or parties wishing to commence mediation and the Chamber, in writing, within 21 days of receipt of the Request for Mediation, whether or not it agrees to mediate the dispute.

## **Article 3**

### **Date of commencement**

- 3.1 Where Article 2.1 or 2.2 applies, the mediation shall be deemed to have commenced on the date on which the Chamber receives the Request for Mediation and the Filing Fee.
- 3.2 Where Article 2.3 applies, the mediation shall, subject to receipt by the Chamber of the Filing Fee, be deemed to have commenced on the date on which the Chamber is notified of the agreement of all parties to mediate. Failing such notification within the 21 days prescribed by Article 2.3, the mediation will be deemed not to have commenced.

## **Article 4**

### **Appointment of a mediator**

- 4.1 For the purposes of Articles 2.1(d), 2.2(b) and 2.3, the parties may agree in writing on the procedure for the nomination of the mediator, or absent such agreement, may propose any specific attributes that each party considers that the mediator should possess.

- 4.2 The Chamber alone may appoint the mediator and shall do so as soon as practicable after the commencement of the mediation, taking account of any nomination or proposals made by the parties.
- 4.3 The appointment of the mediator shall be promptly confirmed by the Chamber to the parties in a written notice of appointment.
- 4.4 Prior to accepting appointment, the mediator shall disclose to the Chamber any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. In the event any such circumstances are disclosed that are considered by the Chamber to disqualify the mediator, that mediator shall not be appointed. In the event such circumstances are not considered by the Chamber to disqualify the mediator, the Chamber shall promptly notify the parties in writing of the disclosure and the parties shall advise the Chamber in writing within 7 days after being so notified, whether or not they agree to the appointment of the mediator, notwithstanding the circumstances disclosed.
- 4.5 If, at any stage during the mediation, circumstances emerge that may give rise to justifiable doubts as to the mediator's independence or impartiality, the mediator shall disclose such circumstances to the parties and to the Chamber, without delay, and in the event such circumstances are considered by the Chamber, having given the parties a reasonable opportunity to state their views, to disqualify the mediator, that mediator's appointment shall be revoked by the Chamber.

- 4.6 If a mediator nominated by the parties is disqualified from appointment in accordance with Article 4.4, or if a mediator's appointment is revoked in accordance with Article 4.5, the parties may jointly nominate an alternative or replacement mediator within 7 days after:
- (a) having been notified by the Chamber that the nominated mediator is disqualified (Article 4.4);
  - (b) having notified the Chamber that the parties do not agree to the appointment in light of the disclosure (Article 4.4); or
  - (c) having been notified by the Chamber that the mediator's appointment has been revoked (Article 4.5).
- 4.7 If the parties fail to agree to the appointment of a mediator of whose disclosure they have been notified in accordance with Article 4.4, or to nominate an alternative or replacement mediator in accordance with Article 4.6, the Chamber shall itself select and appoint an alternative mediator.

## **Article 5**

### **Replacement of a mediator**

- 5.1 In addition to revocation in circumstances contemplated by Article 4.5, the appointment of a mediator shall be revoked by the Chamber and that mediator shall be replaced if:
- (a) the mediator tenders his or her resignation in writing and the Chamber accepts the resignation;
  - (b) all the parties to the mediation request the Chamber, in writing, that the appointment be revoked; or

(c) the Chamber on its own initiative determines that the mediator is no longer able to fulfill his or her functions, is not acting independently or impartially towards a party, or is otherwise not participating in the mediation in accordance with the Rules.

5.2 When a mediator is to be replaced pursuant to Article 4.5 or Article 5.1, or in the case of the death of the mediator, the Chamber may, but is not required to, follow the original nominating procedure, if any.

## **Article 6**

### **Conduct of the mediation**

6.1 The mediator may conduct the mediation in whatever manner, and at any convenient location that he or she considers appropriate, bearing in mind the wishes of the parties, with the aim of facilitating a voluntary settlement.

6.2 The mediator may communicate with the parties separately or together, in person, in writing, or by telephone or video conference, or by any other means agreed with the parties.

6.3 The parties may agree how and in what form they will communicate their respective views to the mediator. However, the mediator may request the exchange of memoranda on issues in dispute, including the history of the parties' negotiations, such memoranda to be accompanied by any documents to which they refer. Written information that a party wishes to keep confidential may be sent to the mediator in separate communications.



- 6.4 Each party shall notify the mediator and all other parties, in writing, of the names of all those who will participate in any meeting convened by the mediator. These shall include the representative of each party authorized to settle the dispute on behalf of that party.

## **Article 7**

### **Privacy and confidentiality**

- 7.1 The mediation shall be private and confidential. Only the mediator and persons identified in accordance with Article 6.4 or by the mediator with the agreement of the parties may participate in meetings convened by the mediator.
- 7.2 There shall be no formal record or transcript of any such meetings.
- 7.3 Unless otherwise agreed in writing by the parties, or required by applicable law:
- (a) information disclosed by the parties during the mediation, whether orally or in writing, shall be confidential and shall not be admissible or sought in any arbitral, judicial or other proceedings;
  - (b) any settlement agreement shall be confidential except if disclosure is required to protect or pursue a legal right; and
  - (c) the parties shall not rely on or invoke in any arbitral, judicial, or other proceedings, views expressed or proposals made by a party or the mediator with respect to a possible settlement of the dispute, or any admissions made by a party in the course of the mediation.

## **Article 8**

### **Case management fee**

- 8.1 As soon as practicable after the date of commencement of the mediation in accordance with Article 3, the Chamber shall direct the parties to pay the case management fee prescribed by the Fee Schedule (the “Case Management Fee”), which shall be paid by the party or parties directed to pay it no later than the deadline set by the Chamber for the payment.
- 8.2 If the Case Management Fee is not paid promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment, without which the Chamber may suspend or terminate the mediation.

## **Article 9**

### **Fees and expenses of the mediator**

- 9.1 Promptly upon the notification of the appointment of the mediator pursuant to Article 4.3, the Chamber shall direct the parties to pay an advance for the mediator’s fees and expenses in accordance with the Fee Schedule.
- 9.2 If the payment directed is not made promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment. Until such payment is made, the mediation shall not proceed.

- 9.3 At the conclusion of the mediation in accordance with any of the circumstances contemplated by Article 10, the Chamber shall render an accounting to the parties for the mediator's fees and expenses. If the advance paid exceeds such fees and expenses, the Chamber shall return the unexpended balance to the parties in the proportions in which the payments were made, or in such other proportions as the parties may have agreed. If the mediator's fees and expenses exceed the advance paid, the balance due will be invoiced to the parties for immediate payment in such proportions as the parties may have agreed, or absent such agreement, in equal shares.
- 9.4 The parties shall be jointly and severally liable to the mediator for his or her fees and expenses until all such fees and expenses have been paid in full.

## **Article 10**

### **Conclusion of the mediation**

The mediation shall be concluded:

- (a) by the signing of an agreement by the parties setting out the terms of the settlement of the dispute by which the parties agree to be bound;
- (b) by a written declaration of the mediator that further efforts at mediation would not, in his or her opinion, contribute to a settlement of the dispute;
- (c) by a written declaration of all parties that the mediation proceedings are concluded;  
or
- (d) when any time limit agreed by the parties for the achievement of a settlement by mediation has expired and the parties have not agreed an extension of that time limit.

## **Article 11**

### **Other proceedings**

- 11.1 If the parties have not agreed in writing otherwise, the parties shall not be constrained by the mediation from commencing or continuing arbitral or judicial proceedings in respect of the dispute that is being mediated under the Rules.
- 11.2 The mediator shall not act as counsel or be called as a witness in any such arbitral or judicial proceedings, whether commenced before, during or after the mediation.
- 11.3 If the parties have not agreed in writing otherwise, the mediator shall not act as arbitrator in any such arbitral proceedings.

## **Article 12**

### **Limitation of liability**

Neither the mediator nor the Chamber (including its officers and employees) shall be liable to any party for any act or omission in connection with any mediation conducted under these Rules, except where such act or omission is shown by that party to be the consequences of conscious and deliberate wrongdoing, or to the extent that any part of this limitation of liability is shown to be prohibited by any applicable law.

## **Appendix I – Fee Schedule effective 1 July 2019**

1. This Fee Schedule forms part of the rules of mediation (the “Rules”) of the Bahrain Chamber for Dispute Resolution (the “Chamber”) and shall be applied in all mediations administered by the Chamber in which the parties have agreed in writing to mediate disputes under the Rules of the Bahrain Chamber for Dispute Resolution, or BCDR, or BCDR-AAA, or have provided for the mediation of a dispute by the Bahrain Chamber for Dispute Resolution, or BCDR, or BCDR-AAA without designating particular rules.
2. The Fee Schedule may be separately amended from time to time by the Chamber.
3. All fees are stated in U.S. dollars, but may be invoiced in any freely convertible currency, and shall be paid in the currency of the invoice.

### **Administrative fees**

4. The administrative fees of the Chamber shall comprise:
  - (a) a non-refundable Filing Fee of \$500, and
  - (b) a Case Management Fee set by the Chamber and not exceeding \$5,000.

### **Filing Fee**

5. In accordance with Article 2.1(e) of the Rules, the non-refundable Filing Fee shall be paid in full by the party or parties wishing to commence mediation, at the time a Request for Mediation is submitted to the Chamber.
6. If two or more parties wish to commence mediation, the Filing Fee shall be paid by them in equal shares or in such other proportions as they may have agreed in writing.

## Case Management Fee

7. In accordance with Article 8 of the Rules, as soon as practicable after the date of commencement of the mediation pursuant to Article 3 of the Rules, the Chamber shall direct the parties to pay the Case Management Fee.
8. The Chamber shall, in its sole discretion, direct the parties to pay the Case Management Fee in such proportions as it deems appropriate, taking into account the wishes of the parties and all the circumstances of the dispute.
9. The Case Management Fee shall be paid by the party or parties directed to pay it no later than the deadline set by the Chamber for the payment. If the Case Management Fee is not paid promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment, without which the Chamber may suspend or terminate the mediation.
10. In the event that the mediation is concluded for any reason prior to the scheduling of the first meeting of the mediator with the parties, the Chamber may, in its sole discretion, reimburse a proportion of the Case Management Fee to the party or parties that have paid it, taking into account the administrative time and overheads of the Chamber accruing to the date of conclusion.
11. The Case Management Fee is the Chamber's charge for its administration of the mediation. It does not cover the cost of any services ancillary to the mediation, such as the provision of meeting rooms and related catering; video conferencing; and photocopying, for which the parties will be billed separately by the Chamber.

## **Fees and expenses of the mediator**

12. In consultation with the mediator, the Chamber shall designate an hourly fee rate to be charged for all time spent by the mediator on any aspect of the mediation, including correspondence, reading and meetings, and shall promptly notify the parties of the rate to be applied.
13. The hourly rate shall not exceed \$500. However, in exceptional cases, a higher rate may be applied if, on consultation with the mediator, the Chamber deems a higher rate appropriate taking into account all the circumstances of the dispute and provided that the higher rate shall be agreed in writing by all the parties.
14. The mediator may, subject to the approval of the Chamber, charge:
  - (a) 50% of his or her rate for the number of hours reserved for the meeting but not used, in the event of cancellation or postponement of a scheduled meeting less than four weeks before the start of the meeting; or
  - (b) 100% of his or her rate for the number of hours reserved for the meeting but not used, in the event of cancellation or postponement of a scheduled meeting at any time during the meeting.
15. The mediator may also charge for his or her reasonable expenses incurred in the course of the mediation, which must be reasonable in amount, taking into account all the circumstances of the dispute.
16. Subject to Clause 20 below, the fees and expenses of the mediator shall be paid by the Chamber to the mediator, on presentation of supporting invoices, from the advances paid by the parties.

## **Advances on costs**

17. In accordance with Article 9.1 of the Rules, the Chamber shall, promptly upon the notification of the appointment of the mediator in accordance with Article 4.3 of the Rules, direct the parties to pay an advance for the mediator's fees and expenses.
18. If the payment directed is not made promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment. Until such payment is made, the mediation shall not proceed.
19. At the conclusion of the mediation, the Chamber shall render an accounting to the parties for the mediator's fees and expenses. If the advance paid exceeds such fees and expenses, the Chamber shall return the unexpended balance to the parties in the proportions in which the payments were made, or in such other proportions as the parties may have agreed. If the mediator's fees and expenses exceed the advance paid, the balance due will be invoiced to the parties for immediate payment in such proportions as the parties may have agreed, or absent such agreement, in equal shares.
20. The parties shall be jointly and severally liable to the mediator for his or her fees and expenses until all such fees and expenses have been paid in full.

## **Disputes**

21. Any dispute regarding the administrative fees or the fees and expenses of the mediator shall be determined by the Chamber.



## **Appendix II – Model Clauses**

### **Mediation**

“Any dispute arising out of or in connection with this contract shall be referred to mediation in accordance with the Rules of Mediation of the Bahrain Chamber for Dispute Resolution, which rules are deemed to be incorporated by reference into this contract.”

### **Mediation followed if necessary by arbitration**

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to mediation in accordance with the Rules of Mediation of the Bahrain Chamber for Dispute Resolution (hereinafter “BCDR”). If the dispute remains unresolved [30] days after the submission to BCDR of the Request for Mediation, or after such shorter or longer period as the parties may agree in writing, the dispute shall be finally settled by arbitration in accordance with the Rules of Arbitration of BCDR, which rules are deemed to be incorporated by reference into this contract.”

