



| *BCDR-AAA Mediation Rules*





## **BCDR-AAA Mediation Rules**

### **Article 1 Agreement of Parties**

Whenever parties have agreed in writing to mediate disputes under these BCDR-AAA Mediation Rules, or have provided for mediation or conciliation of existing or future disputes under the auspices of the Bahrain Chamber for Dispute Resolution without designating particular rules, they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.

The parties by mutual agreement may vary any part of these rules including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

### **Article 2 Initiation of Mediation**

Any party or parties to a dispute may initiate mediation under the BCDR-AAA's auspices by making a request for mediation to the BCDR-AAA office via email, regular mail, or fax.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the BCDR-AAA and the other party or parties as applicable:

1. A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate
2. The names, regular mail addresses, email addresses and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
3. A brief statement of the nature of the dispute and the relief requested
4. Any specific qualifications the mediator should possess.

Where there is no preexisting stipulation or contract by

which the parties have provided for mediation of existing or future disputes under the auspices of BCDR-AAA, a party may request the BCDR-AAA to invite another party to participate in “mediation by voluntary submission”. Upon receipt of such a request, the BCDR-AAA will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

### **Article 3 Representation**

Subject to any applicable law, any party may be represented by persons of the party’s choice. The names and addresses of such persons shall be communicated in writing to all parties and to the BCDR-AAA.

### **Article 4 Appointment of Mediator**

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

1. Upon receipt for a request for mediation, the BCDR-AAA will send to each party a list of mediators from the BCDR-AAA’s Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the BCDR-AAA of their agreement.
2. If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the BCDR-AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the BCDR-AAA shall invite a mediator to serve.
3. If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the BCDR-AAA shall have the authority to make the appointment from among other members of

the Panel of Mediators without the submission of additional lists.

## **Article 5** **Mediator's Impartiality and Duty to Disclose**

BCDR-AAA mediators are required to abide by the Model Standards of Conduct for Mediators in effect at the time a mediator is appointed to a case. Where there is a conflict between the Model Standards and any provision of these Mediation Rules, these Mediation Rules shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, BCDR-AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. BCDR-AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time frame desired by the parties. Upon receipt of such disclosures, the BCDR-AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

## **Article 6** **Vacancies**

If any mediator shall become unwilling or unable to serve, the BCDR-AAA will appoint another mediator, unless the parties agree otherwise, in accordance with Section 4.

## **Article 7**

### **Duties and Responsibilities of the Mediator**

1. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
2. The mediator is authorized to conduct separate or ex parte meetings and other communications with the parties and/or their representatives before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
3. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the other interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
4. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
3. In the event that a complete settlement of all or some issues in dispute is not achieved within the schedule mediation conference(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
6. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

## **Article 8**

### **Responsibilities of the Parties**

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

### **Article 9 Privacy**

Mediation conferences and related mediation communications are private proceedings. The parties and their representatives may attend mediation conferences. Other persons may attend only with the permission of the parties and with the consent of the mediator.

### **Article 10 Confidentiality**

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

1. Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
2. Admissions made by a party or other participant in the course of the mediation proceedings;
3. Proposals made or views expressed by the mediator; or

4. The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

**Article 11**  
**No Stenographic Record**

There shall be no stenographic record of the mediation process, unless the parties agree otherwise.

**Article 12**  
**Termination of Mediation**

The mediation shall be terminated:

1. By the execution of a settlement agreement by the parties; or
2. By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
3. By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
4. When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

**Article 13**  
**Exclusion of Liability**

Neither the BCDR-AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the BCDR-AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these Rules.

**Article 14**  
**Interpretation and Application of Rules**

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by the BCDR-AAA.



## **Article 15**

### **Deposits**

Unless otherwise directed by the mediator, the BCDR-AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

## **Article 16**

### **Expenses**

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

## **Article 17**

### **Cost of the Mediation**

The nonrefundable case set-up fee is \$250 per party. In addition, the parties are responsible for compensating the mediator at his or her published rate, for conference and study time (hourly or per diem).

All expenses are generally borne equally by the parties. The parties may adjust this arrangement by agreement.

Before the commencement of the mediation, the BCDR-AAA shall estimate the anticipated total expenses.

Each party shall pay its portion of that amount as per the agreed upon arrangement. When the mediation is terminated, the BCDR-AAA shall render an accounting and return any unexpended balance to the parties.

## **Article 18**

### **Language**

If the parties have not agreed otherwise, the language(s) of the mediation shall be that of the documents containing the mediation agreement.

### **Conference Room Rental**

The costs described above do not include the use of BCDR-AAA conference rooms. Conference rooms are available on a rental basis. Please contact your local BCDR-AAA office for availability and rates.





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