



**International Institute of Construction Arbitrators  
("IICArb")**

**Mediation Rules**

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## **AMENDMENT OF STANDARD MEDIATION RULES**

1. These standard rules of mediation can be amended by mutual agreement, reduced to writing and signed by both Parties.

## **PURPOSE OF MEDIATION**

2. The purpose of mediation:
  - (a) promote access to justice;
  - (b) promote restorative justice;
  - (c) preserve the relationship between Parties;
  - (d) Facilitate an expeditious and cost-effective resolution of a Dispute between Parties;
  - (e) Providing Parties with solutions to their Dispute(s).
  - (f) Providing Parties with a mechanism of resolving future Disputes.

## **PURPOSE OF THE RULES**

3. The purpose of the standard rules of mediation is to provide a foundation for the procedure and conduct of mediation.

## **DEFINITIONS**

4. The following words will bear the meanings assigned to them:

“Confidentiality” means that the mediation proceedings and anything discussed therein is confidential and may not be disclosed to third Parties.

“Claim” means the written statement by the Party intending to claim relief against the other Party, setting out in clear and concise terms the material facts on which the claim is based.



“Defence” means the written statement signed by the Party against whom a claim is made, setting out in clear and concise terms the material facts on which the defence is based.

“Discussions in caucus” means the discussion with the Parties separately and privately.

“Dispute” means the subject matter over which the Parties are in disagreement and means the subject matter of actual or potential litigation, arbitration or adjudication.

“Full disclosure” means that the Parties are obligated to disclose all the information pertaining to the Dispute(s).

“Litigation” means court proceedings commenced by action or application.

“Mediation” means the alternative Dispute resolution (ADR) mechanism where an independent and impartial third Party (Mediator) assists the Parties to resolve their Dispute(s), by facilitating discussions, assisting in identifying issues, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the Disputes.

“Mediation session” means the period that a Mediator and the Parties are engaged in mediation of the Dispute(s).

“Mediator” means the independent and impartial third Party assisting the Parties to resolve their Dispute(s).

“Parties” means the Parties to the Dispute, which are also the Parties to the agreement to mediate and Party shall mean either one of them.

“Settlement Agreement” means the agreement between the Parties reached in respect of their Dispute(s) referred to mediation.



“Without prejudice” means that all the discussions and/or agreements made during the mediation proceedings and prior to signing of the Settlement Agreement are done in good faith and confidentiality and may not be used against either Party in any court of law or other Dispute resolution tribunal.

#### **APPLICATION OF THE STANDARD RULES OF MEDIATION**

5. These rules apply where the Parties have voluntarily submitted to the mediation mechanism and signed the agreement to mediate.

#### **REFERRAL TO MEDIATION**

6. A Dispute may be referred to mediation:-
  - (a) where litigation, adjudication or arbitration has already commenced, prior to the hearing date (in the case of litigation or arbitration) or prior to the adjudicator’s decision (in the case of adjudication); or
  - (b) where litigation, arbitration or adjudication proceedings have started, prior to the judgement, award or decision; or
  - (c) in terms of the agreement between the Parties.

#### **SELECTION OF THE MEDIATOR**

7. The Parties jointly agree to the appointment of a Mediator. The Mediator so appointed are stipulated in the agreement to mediate. Should the Parties fail to agree on the appointment of a Mediator, either Party may request IICArb to make the appointment. A request for the appointment of a Mediator to IICArb must be made in writing to [info@iicarb.com](mailto:info@iicarb.com) and shall only be made after IICArb evaluated the request and upon proof of payment of the prescribed fee.

#### **PLACE AND LANGUAGE(S) OF THE MEDIATION**

8. The Parties and the Mediator shall mutually agree on a place of mediation unless the place of mediation is already agreed in the agreement to mediate.



9. The mediation proceedings may be conducted in person or virtually through electronic means as agreed between the Parties and the Mediator.
10. Mediation sessions shall be conducted in English, unless the Parties otherwise agree.

#### **FEES AND COSTS**

11. The Parties shall enter in an agreement as to who will be responsible for the mediation fees.
12. In the absence of such agreement, the mediation fees shall be paid jointly by the Parties.
13. Mediation fees shall be determined by the Mediator.
14. Mediation fees are required to be paid in advance, prior to scheduling a mediation session, unless otherwise agreed between the Mediator and the Parties.
15. If one of the Parties is unable to attend the mediation session, that Party must inform the other and the Mediator, in order to cancel or re-schedule the mediation session.
16. Where the mediation session is cancelled or re-schedule in less than 72 hours' notice, the mediation fee shall be forfeited by the Parties.
17. Where the mediation session is cancelled or re-scheduled upon notice of more than 72 hours, the mediation fee will be either returned or utilized for the next mediation session.

#### **MEDIATION PROCEDURE / STEPS**

18. The mediation procedure and steps shall be as follows:-



- (1) The Parties will enter into an agreement to mediate to which these rules of mediation applies.
- (2) Where the Parties request for the appointment of a Mediator by IICarb, either Party shall deliver to IICarb a Request for Appointment of a Mediator together with an intake form in the prescribed format and proof of payment of the prescribed fee.
- (3) Proof of payment of the mediation fee shall be sent to Mediator.
- (4) Once the Mediator has been appointed, the Mediator will arrange a mediation session with both Parties - purpose of first session is to set an agenda. Here all the matters in Dispute will be identified, elaborated and/or detailed and prioritized. Should there be sufficient time and depending on the length of the session the mediation discussions will commence. The Mediator shall also determine whether any documents must be disclosed by the Parties.
- (5) Scheduling the mediation session(s) – the dates and times to be agreed between the Parties and the Mediator.

## **ROLE OF THE MEDIATOR**

19. The Mediator has to ensure that the Parties understand the mediation process and its objectives.
20. The Mediator acts as an independent and impartial person to the proceedings.
21. The Mediator has a facilitative and evaluative roll and participation in the proceedings. The Mediator may make proposals for resolving the Dispute(s).



22. The Mediator is obligated to provide legal information where necessary, however the Mediator is not permitted to provide legal advice.

23. The proceedings are inquisitorial in nature.

24. The Mediator is responsible for drafting the Settlement Agreement unless the Parties otherwise agrees.

### **SETTLEMENT AGREEMENT**

25. After the successful conclusion of the mediation proceedings, and where the Parties have resolved their Dispute(s) by agreement, the Mediator shall draft a Settlement Agreement recording the Parties' agreement in respect of the Dispute(s) referred to mediation.

26. Each Party shall be required to sign the Settlement Agreement, which shall be a binding agreement between the Parties.

### **CONDUCT OF THE MEDIATION**

27. The mediation sessions shall be conducted privately, between the Parties and the Mediator.

28. The Parties shall give notice to each other and the Mediator as to the number of persons as well as their designations, to attend the mediation sessions.

29. The Parties shall act in good faith throughout the mediation proceedings.

30. The mediation proceedings are confidential and without prejudice.

### **TERMINATION OF THE PROCEEDINGS**

31. The mediation process is a voluntary process. At any time during the mediation process, either Party including the Mediator may terminate the mediation proceedings.





32. Where the mediation proceedings are terminated, the Party terminating the mediation proceedings must give notice in writing to the other Party and the Mediator.
  33. Upon notice of termination, the mediation proceedings will be terminated with immediate effect.
  34. The Party terminating the mediation proceedings must give reasons for doing so.
  35. The mediation proceedings will automatically terminate upon signature of the Settlement Agreement.
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