

# MEDIATION RULES



**klrc**   
KUALA LUMPUR REGIONAL  
CENTRE FOR ARBITRATION

REGIONAL RESOLUTION  
GLOBAL SOLUTION

## ***KLRCA Model Mediation Clause***

*“Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the Kuala Lumpur Regional Centre for Arbitration Rules for Mediation as at present in force.”*

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**GUIDE TO KLRCA  
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*This is the KLRCA Mediation Rules  
as produced by the Kuala Lumpur  
Regional Centre for Arbitration.*



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*Part I*

KLIRCA  
MEDIATION  
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### ***Application of the Rules***

1. These rules apply to any Mediation of any present or future dispute where the parties have agreed that the KLRCA Mediation Rules (“the Rules”) will apply.
2. Where any of the Rules is in conflict with the provision of law from which the parties cannot derogate, that provision prevails.

### ***Commencement of Mediation Proceedings***

3. Any party/parties wishing to commence Mediation proceedings pursuant to the Rules shall give to KLRCA a written Request for Mediation which shall contain the following:-
  - a) The names, addresses (including e-mail addresses), telephone numbers of the parties and any legal or other representatives involved;
  - b) A reference to any Mediation clause or a copy of the 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) A brief explanation of the nature of dispute, the amount involved, if any, and any specific relief or outcome sought by any party; and
  - e) The Registration Fee set out in accordance with the Schedule of Fees annexed hereto (“Registration Fee”).

4. Upon receipt of a written Request for Mediation under Rule 3, KLRCA shall send a copy of the Request for Mediation to the other party/parties named.
5. The Mediation process shall be deemed to have commenced when KLRCA receives written notice of the other party's/parties' acceptance of the Request.
6. If the other party/parties reject(s) the Request or if KLRCA does not receive a reply within 30 days from the date of KLRCA's written notice of the Request under Rule 4, KLRCA may elect to treat this as a rejection of the Request and inform the party/parties initiating the Mediation accordingly.

### ***Appointment of the Mediator***

7. Where all parties have agreed upon a proposed Mediator, who is willing to serve and is not disqualified under Rule 10, the parties will jointly appoint that person as the Mediator.
8. If, within 30 days of the Request for Mediation under Rule 4, all parties have not agreed upon a proposed Mediator willing to serve and not disqualified under Rule 10, then the Director of KLRCA shall appoint the Mediator and the parties are deemed to have approved the appointment made by the Director of KLRCA.



9. There shall be one Mediator unless the parties otherwise agree.
10. No person may act as a Mediator in any dispute in which that person has any financial or personal interest or any conflict of interest likely to affect or which might reasonably be perceived to affect the Mediator's independence or ability to act impartially at all times, save where the parties have been notified in writing of such circumstances and have subsequently expressly consented in writing to the appointment of a Mediator.
11. If, following 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, where the Mediator was appointed by KLRCA, shall immediately inform KLRCA. If any party objects to the continued service of the Mediator, the Mediator shall be disqualified. In this event, the parties will have a further 30 days from disqualification of the Mediator to appoint a new Mediator. In the event that the parties do not within such 30-day period agree upon a substitute proposed Mediator willing to serve and not disqualified under Rule 10, then the Director of KLRCA shall appoint the Mediator and the parties are deemed to have approved the appointment made by the Director of KLRCA.

### ***Role of the Mediator***

12. The Mediator shall assist the parties in an independent and impartial manner to reach an amicable settlement of the dispute.
13. The Mediator may conduct the Mediation in such manner as the Mediator considers appropriate, having regard to the circumstances of the dispute, the wishes of the parties and any practical considerations which might be relevant for the satisfactory and prompt resolution of the dispute.
14. Prior to or during the Mediation, the Mediator may communicate with the parties together, or with any party separately, with or without its representatives, either in person, by telephone, videoconference or electronically as the Mediator sees fit.
15. The parties may be required by the Mediator to participate in a preliminary conference prior to the commencement of the formal Mediation. The purpose of the preliminary conference is to enable the parties, with the assistance of the Mediator, to:-
  - a) Discuss and agree upon issues in dispute or formulate a process by which those issues are to be clarified and agreed;
  - b) Make provision for, in accordance with the Mediator's directions, the service and exchange of documentary material relevant to the Mediation including position papers by all parties;

- c) Make provision for such other planning and administrative arrangements as are necessary and appropriate to enable the Mediation to proceed.

### ***Role of the Parties***

16. Each party to the Mediation has a duty to participate in good faith in the Mediation. Each party and their representatives will use their best endeavours to co-operate with each other and with the Mediator to settle their differences.

### ***Authority and Representation***

17. Each party to a Mediation may be assisted or represented by any person it chooses (including legal advisers). The identity, contact details and roles of any such persons must be disclosed to all parties and to the Mediator.
18. Each party to the Mediation must have authority to settle a dispute or be represented by a person or persons having full authority to settle the dispute. In the event that any such authority is limited, the limits of authority must be disclosed to the parties and the Mediator.

### ***Confidentiality***

19. All mediation proceedings shall be private and confidential. All parties and participants in the Mediation shall execute a written undertaking in the form of the Confidentiality Undertaking as provided for in Schedule A to give effect to this requirement.
20. Any information given to the Mediator by a party in caucus or private session shall be kept confidential as between the party furnishing the information and the Mediator unless the party providing the information consents to its disclosure to any other party to the Mediation.
21. The Mediator, all parties and participants in the Mediation must keep all matters relating to or arising out of the Mediation private and confidential except:-
  - a) Where disclosure is compelled by law;
  - b) If necessary to give effect to a Mediation agreement or to enforce an agreement reached to settle or resolve the whole or any part of the dispute;
  - c) With the consent of the parties to the Mediation.

### ***Proceedings***

22. Unless parties agreed otherwise, the Mediation proceedings shall be held in the KLRCA premises.

23. The parties will be notified of the time and venue of the Mediation proceedings which shall be subject to the parties' agreement.
24. The parties shall ensure that they have all necessary additional services where required for the Mediation.

### ***Termination of the Mediation***

25. The Mediator may suspend or terminate the Mediation or withdraw as Mediator when he or she reasonably believes the circumstances require it, including when he or she has reasonable grounds to suspect that:-
  - a) The parties are involved in illegal/fraudulent conduct; or
  - b) The parties are unable to participate meaningfully and reasonably in negotiations; or
  - c) Continuation of the Mediation process would cause significant harm to any party or a third party.
26. When the Mediator determines that it is necessary to suspend or terminate a Mediation or to withdraw, the Mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the parties.
27. The Mediator shall promptly inform the Director of KLRCA of the termination.

28. In addition to termination occurring under Rule 25, the Mediation shall be deemed to be terminated upon:-
- a) Upon the signing by the parties of a written settlement agreement;
  - b) A written declaration of the Mediator, after consultation with the parties, to the effect that further attempts at Mediation are no longer justified;
  - c) A written declaration by any of the parties addressed to the Mediator to the effect that the Mediation is hereby terminated; or
  - d) Expiry of 3 months from the date of the Request for Mediation under Rule 4 unless agreed otherwise by the parties; or
  - e) By order of the Director of KLRCA in the event that any monies properly payable under Rule 30 are not paid as required by these Rules.

### **Costs**

29. Unless otherwise agreed or ordered by a court or arbitrator, each party shall bear its own costs of the Mediation.
30. The costs and expenses of the Mediation shall include but are not limited to:-
- a) The professional fees of the Mediator;

- b) The cost of the venue hire, including meeting rooms, breakout rooms, meals, translation fees, photocopying fees, internet access, telephone and communication expenses, administrative costs incurred under Rule 30(d), and any other costs reasonably and properly incurred in respect of the organisation or conduct of the Mediation;
- c) Any fees or costs set out above in respect of expert advice or expert witnesses who attend or provide such advice with the consent of the parties;
- d) The proper administrative charges of KLRCA relating to the conduct of the Mediation fixed in accordance with this Rule. Without limiting the foregoing, the costs of KLRCA may include:-
  - i) The Registration Fees;
  - ii) Appointment Fee and
  - iii) Any Administrative Costs.

31. The parties are jointly and severally liable for costs and expenses set out in Rule 30 above.

### ***Administrative Assistance***

32. Subject to Rule 24 above, the Director of KLRCA may arrange for translators, administrative assistance, and/or other facilities in order to facilitate the Mediation at the request of the Mediator or the parties.

### ***Exclusion of Liability***

33. Except in the case of fraud on the part of KLRCA or the person claiming immunity or protection from suit under this rule, neither KLRCA nor the Mediator shall be liable to any party or to any other participant in the Mediation for any act or omission in relation to or arising out of the Mediation conducted under these rules or in respect of or arising out of any settlement reached in any Mediation conducted under these rules.
34. All statements whether written or oral made in the course of the Mediation shall not be relied upon to institute or maintain any action for defamation, libel, slander or any related complaint.

### ***Role of Mediator in Other Proceedings***

35. The Mediator shall not, without the consent of the parties, act as an arbitrator or as a representative or counsel of a party or appear as a witness in any arbitral or judicial proceedings or give advice to any person whatsoever in respect of a dispute that is the subject of the Mediation.
36. The parties and the Mediator agree that they will not present the Mediator as a witness in any such proceedings, nor will they subpoena or endeavour to compel the Mediator to give evidence or to produce documents in any subsequent judicial proceedings or arbitration.



### ***Schedule of Fees***

37. Parties are free to agree with the Mediator on the Mediator's Fees. Unless otherwise agreed, the Schedule of Fees shall apply.
38. The Schedule of Fees provides the fee scale for international and domestic Mediation.
- a) An "international Mediation" means a Mediation where –
- i) One of the parties to the Mediation has its place of business in any State other than Malaysia;
  - ii) Any place where a substantial part of the obligations of any commercial or other relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is in any state other than Malaysia; or
  - iii) The parties have expressly agreed that the subject matter of the Mediation relates to more than one State.
- b) A "domestic Mediation" is any Mediation which is not an "international Mediation".
39. Prior to the commencement of the Mediation, each party shall pay the Registration Fees, Appointment Fee (if any) and deposit the Mediator's Fees and Administration Costs with the KLRCA in accordance with the Schedule of Fees annexed hereto.

40. At any time during the course of the Mediation the Director of KLRCA may require additional deposits to be paid by the parties on account of the costs and expenses referred to in Rule 30. Any additional such sums requested by the Director of KLRCA on account of the costs and expenses referred to in Rule 30 shall be payable 15 days after the receipt of the request for additional deposits.
41. If any of the monies referred to in Rules 29 and 30 are not paid in full by both parties within 15 days after the receipt of the Request, the Director of KLRCA shall so inform the parties in order that one or another of them may make the required payment.
42. If any such payment is not made, the Mediator, after consultation with the Director of KLRCA, may order the suspension or termination of the Mediation.
43. The Director of KLRCA may apply the deposit towards the fees and disbursements incurred by KLRCA and the Mediator for the Mediation.
44. Upon termination of the Mediation, the Director of KLRCA shall render an account to the parties of the deposit received and used and return any unexpended balance to the parties.

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*Part II*

# SCHEDULES

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## ***Schedule of Fees***

### DOMESTIC MEDIATION\*

#### **a) *Registration Fee***

A non-refundable registration fee of RM150.00 is payable by the party initiating Mediation (Rule 3(e)).

#### **b) *Administrative Costs***

The Administrative Costs for Mediation shall be fixed at RM500.00 per case.

#### **c) *Mediator's Fee***

- i) RM3500.00 per day; and
- ii) RM450.00 per hour for review of documents and related works.

\* The fees payable to the mediator do not include any possible taxes such as service tax, withholding tax, Goods and Services Tax (where applicable) and other taxes or charges applicable to the mediator's fees. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the mediator and the parties.

\* The Centre's administrative costs payable include any possible taxes such as service tax, withholding tax, Goods and Services Tax and other taxes or charges applicable to the Centre's administrative costs. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the parties.

## INTERNATIONAL MEDIATION\*

### **a) Registration Fee**

A non-refundable registration fee of USD50.00 is payable by the party initiating Mediation (Rule 3(e)).

### **b) Administrative Costs**

The Administrative Costs for Mediation shall be fixed at USD250.00 per case.

### **c) Mediator's Fee**

- i) USD6000.00 per day; and
- ii) USD750.00 per hour for review of documents and related works.

\* The fees payable to the mediator do not include any possible taxes such as service tax, withholding tax, Goods and Services Tax (where applicable) and other taxes or charges applicable to the mediator's fees. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the mediator and the parties.

\* The Centre's administrative costs payable include any possible taxes such as service tax, withholding tax, Goods and Services Tax and other taxes or charges applicable to the Centre's administrative costs. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the parties.

**Schedule A**

**Confidentiality Agreement and Undertaking**

**Parties:**

..... And

..... And

..... **("The Mediator")**

(have entered into a Mediation Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ in accordance with which the Mediator will conduct a mediation.

- 1. The undersigned acknowledge by their signatures that they attend the mediation on the basis of their agreement to the terms of clause 2 and 3 below.
- 2. Each of the undersigned undertakes to the parties and the Mediator:
  - a) to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the Mediation including the preliminary steps (**"confidential information"**);

- b) not to act contrary to the undertaking in sub-paragraph (a) unless compelled by law to do so or with the consent of the party who disclosed the confidential information;
  - c) not to use confidential information for a purpose other than the Mediation.
3. Each of the undersigned undertakes to the parties and the Mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceedings between the parties to the Mediation:
- a) any settlement proposal whether made by a party or the Mediator;
  - b) the willingness of a party to consider any such proposal;
  - c) any admission or concession made by a party
  - d) any statement or document made by the Mediator.
4. The parties acknowledge that the mediator may disclose information during or obtained in connection with the mediation in any one or more of the following circumstances:
- a) with the consent of the person from whom the information was obtained;
  - b) in connection with the fact that an agreement or arrangement has been reached and as to the substance of the agreement or arrangement;

- c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
- d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation, Bar Association, Law Society or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
- e) in accordance with a requirement imposed by or under a law of a country or a state.

.....  
Signature

.....  
Print Name

.....  
Signature

.....  
Print Name

.....  
Signature

.....  
Print Name



## **Schedule B**

### **Model Mediation Clause**

*“Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the Kuala Lumpur Regional Centre for Arbitration Rules for Mediation as at present in force.”*

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*Part III*

# MEDIATION ACT 2012

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## LAWS OF MALAYSIA

Act 749

## MEDIATION ACT 2012

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2. Non-application
3. Interpretation
4. Mediation Does Not Prevent Court Action, Arbitration, etc.

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**Schedule**

## LAWS OF MALAYSIA

*Act 749*

### MEDIATION ACT 2012

An Act to promote and encourage mediation as a method of alternative dispute resolution by providing for the process of mediation, thereby facilitating the parties in disputes to settle disputes in a fair, speedy and cost-effective manner and to provide for related matters.

**ENACTED** by the Parliament of Malaysia as follows:

#### ***Part I***

#### ***Preliminary***

##### **1. *Short Title and Commencement***

- 1) This Act may be cited as the Mediation Act 2012.
- 2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

##### **2. *Non-application***

- 1) This Act shall not apply to—
  - a) any dispute regarding matters specified in the Schedule;

- b) any mediation conducted by a judge, magistrate or officer of the court pursuant to any civil action that has been filed in court; and
- c) any mediation conducted by the Legal Aid Department.

### 3. *Interpretation*

In this Act, unless the context otherwise requires—

**“non-party”** means a person who participates in a mediation, other than a party or mediator, and includes counsels of each party, experts in the subject matter of a dispute and witnesses;

**“institution”** means a body or organization that provides mediation services;

**“mediation communication”** means an oral or written statement made—

- a) during a mediation;
- b) in relation to a mediation; or
- c) for the purposes of considering, conducting, participating in, commencing, continuing, reconvening or concluding a mediation or retaining a mediator;

**“Minister”** means the Minister charged with the responsibility for legal affairs;

**"mediator"** means a mediator appointed by the parties under section 7;

**"mediation"** means a voluntary process in which a mediator facilitates communication and negotiation between parties to assist the parties in reaching an agreement regarding a dispute;

**"mediation agreement"** means the agreement referred to in section 6;

**"settlement agreement"** means the agreement referred to in section 13;

**"party"** means a party to a mediation agreement and includes the Federal Government and a State Government;

**"proceedings"** means any proceedings of a civil nature and includes an application at any stage of proceedings.

#### **4. *Mediation does not Prevent Court Action, Arbitration, etc.***

- 1) Subject to section 2, any person may, before commencing any civil action in court or arbitration, initiate mediation.
- 2) A mediation under this Act shall not prevent the commencement of any civil action in court or arbitration nor shall it act as a stay of, or extension of any proceedings, if the proceedings have been commenced.

**Part II*****Commencement of Mediation*****5. *Commencement of Mediation***

- 1) A person may initiate mediation by sending to the person with whom he has a dispute, a written invitation regarding the mediation.
- 2) The written invitation referred to in subsection (1) shall briefly specify the matters in dispute.
- 3) Upon receipt of a written invitation sent by the person initiating the mediation under subsection (1), the person with whom he has a dispute may, in writing, accept the written invitation.
- 4) A mediation shall be deemed to have been commenced upon the person initiating the mediation receiving the acceptance of the written invitation from the person with whom he has a dispute under subsection (3).
- 5) An invitation regarding a mediation under subsection (1) shall be deemed to have been rejected if the person initiating the mediation does not receive a reply from the person with whom he has a dispute, within fourteen days from the date he sends the person the written invitation or within such other period of time specified in the written invitation.



## **6. Mediation Agreement**

- 1) Upon the commencement of a mediation as specified under subsection 5(4), the parties shall enter into a mediation agreement.
- 2) A mediation agreement shall be in writing and signed by the parties.
- 3) A mediation agreement shall contain an agreement by the parties to submit to mediation disputes which have arisen or which may arise between them, the appointment of a mediator, the costs to be borne by the parties and other matters the parties deem appropriate.

## **Part III Mediator**

### **7. Appointment of Mediator**

- 1) The parties shall appoint a mediator to assist them in the mediation.
- 2) A mediator appointed under this Part shall—
  - a) possess the relevant qualifications, special knowledge or experience in mediation through training or formal tertiary education; or
  - b) satisfy the requirements of an institution in relation to a mediator.
- 3) The parties may request for assistance from the institution to appoint a mediator or mediators on their behalf.

- 4) The appointment of a mediator under subsection (1) shall be made by way of a mediation agreement under section 6 and there shall be one mediator for a mediation unless the parties agree otherwise.
- 5) If there is more than one mediator, the mediators shall act jointly in the mediation.
- 6) No appointment of any mediator shall be valid except with the prior written consent of the mediator.
- 7) A mediator appointed under this Part shall disclose, before accepting the appointment, any known facts that a reasonable person would consider likely to affect his impartiality as mediator, including a financial or personal interest in the outcome of the mediation.
- 8) The mediator may be paid a fee or given any other consideration as agreed between the parties.

## **8. *Termination of Appointment of Mediator***

- 1) If a mediator appointed under this Part—
  - a) no longer possesses the relevant qualifications, special knowledge or experience in mediation as required under paragraph 7(2)(a);
  - b) no longer satisfies the requirement of an institution in relation to a mediator as required under paragraph 7(2)(b);

- c) is found to have financial or personal interest in the dispute;
  - d) is found to have obtained his appointment by way of fraud; or
  - e) is unable to serve as a mediator for the mediation, the parties may terminate the appointment of the mediator and appoint another mediator for the mediation or request the institution to appoint another mediator.
- 2) Notwithstanding subsection (1), the parties may terminate the appointment of a mediator for any reason and shall inform the mediator the reason for the termination.

## ***Part IV***

### ***Mediation Process***

#### ***9. Role of Mediator***

- 1) A mediator shall facilitate a mediation and determine the manner in which the mediation is to be conducted.
- 2) A mediator may assist the parties to reach a satisfactory resolution of the dispute and suggest options for the settlement of the dispute.
- 3) For the purposes of subsection (1), the mediator shall act independently and impartially.

## **10. *Submission of Statements to Mediator***

- 1) A mediator may request each party to submit a statement setting out the brief facts of the dispute, supplemented by any documents that the party deems appropriate to submit.
- 2) At any stage of a mediation, a mediator may request any party to submit any additional information or document as the mediator deems appropriate.

## **11. *Conduct of Mediation***

- 1) A mediator shall ensure that a mediation is privately conducted and he may meet with the parties together or with each party separately.
- 2) Notwithstanding subsection (1)—
  - a) a non-party of any party's choice may participate in a mediation to assist the party, subject to the consent of the mediator; and
  - b) a non-party of a mediator's choice may participate in a mediation to assist the mediator during the mediation, subject to the consent of the parties.
- 3) A mediator may end the mediation if, in his opinion, further efforts at mediation would not contribute to a satisfactory resolution of the dispute between the parties.

**Part V****Conclusion of Mediation****12. Conclusion of Mediation**

A mediation shall conclude—

- a) upon the signing of a settlement agreement by the parties under section 13;
- b) upon the issuance of a written declaration by a mediator to the parties stating that further efforts at mediation would not contribute to a satisfactory resolution of the dispute;
- c) upon the issuance of a written declaration by the parties to a mediator stating that the mediation is terminated; or
- d) unless otherwise provided by mediation agreement referred to in section 6—
  - i) upon the issuance of a written declaration by a party to the other party and the mediator stating that the mediation is terminated;
  - ii) upon the withdrawal from a mediation by any party; or
  - iii) upon the death of any party or incapacity of any party.

### **13. Settlement Agreement**

- 1) Upon the conclusion of a mediation and the reaching of an agreement by the parties regarding a dispute, the parties shall enter into a settlement agreement.
- 2) The settlement agreement under subsection (1) shall be in writing and signed by the parties.
- 3) The mediator shall authenticate the settlement agreement and furnish a copy of the agreement to the parties.

### **14. Effect of Settlement Agreement**

- 1) A settlement agreement shall be binding on the parties.
- 2) If proceedings have been commenced in court, the settlement agreement may be recorded before the court as a consent judgment or judgment of the court.

**Part VI**  
**Confidentiality and Privilege**

**15. Confidentiality**

- 1) No person shall disclose any mediation communication.
- 2) Notwithstanding subsection (1), mediation communication may be disclosed if—
  - a) the disclosure is made with the consent of the parties;
  - b) the disclosure is made with the consent of the person who gives the mediation communication;
  - c) the disclosure is required under this Act or for the purpose of any civil or criminal proceedings under any written law; or
  - d) the disclosure is required under any other written law for the purposes of implementation or enforcement of a settlement agreement.

**16. Privilege**

- 1) Any mediation communication is privileged and is not subject to discovery or be admissible in evidence in any proceedings.
- 2) Notwithstanding subsection (1), the mediation communication is not privileged if—

- a) the privilege is expressly waived in writing by the parties, the mediator and the non-party;
- b) it is a public document by virtue of the Evidence Act 1950 [Act 56];
- c) it is a threat to inflict bodily injury or commit a crime;
- d) it is used or intended to be used to plan a crime, attempt to commit or commit a crime, or to conceal a crime or criminal activity or an ongoing crime or ongoing criminal activity;
- e) it is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator; or
- f) it is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, non-party, or representative of a party based on their conduct during any mediation session.



**Part VII**  
**Miscellaneous**

**17. Costs**

- 1) The costs of a mediation shall be borne equally by the parties.
- 2) Notwithstanding subsection (1), the parties may agree on the amount of costs to be borne by each party.

**18. Power to Amend Schedule**

The Minister may, by order published in the Gazette, amend the Schedule.

**19. Liability of a Mediator**

A mediator shall not be liable for any act or omission in respect of anything done or omitted to be done in the discharge of his functions as a mediator unless the act or omission is proved to have been fraudulent or involves wilful misconduct.

**20. Regulations**

The Minister may make regulations for the better carrying out of the objects and purposes of this Act.

**Schedule***[Paragraph 2(a)]***Non-application**

- 1) Proceedings involving a question which arises as to the effect of any provision of the Federal Constitution.
- 2) Suits involving prerogative writs, as set out in the Schedule to the Courts of Judicature Act 1964 [Act 91].
- 3) Proceedings involving the remedy of temporary or permanent injunctions.
- 4) Election petitions under the Election Offences Act 1954 [Act 5].
- 5) Proceedings under the Land Acquisition Act 1960 [Act 486].
- 6) Proceedings involving the exercise of the original jurisdiction of the Federal Court under Article 128 of the Federal Constitution.
- 7) Judicial review.
- 8) Appeals.
- 9) Revision.
- 10) Any proceedings before a native court.
- 11) Any criminal matter.

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*Part IV*

GUIDE TO  
KLRCA MEDIATION  
RULES

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### **1. *What are the KLRCA Mediation Rules?***

The KLRCA Mediation Rules are a set of procedural rules covering all aspects of the Mediation process to help parties resolve their domestic or international disputes.

### **2. *Where can I find the KLRCA Mediation Rules model clause?***

Parties who wish to resort to the KLRCA Mediation Rules may incorporate the KLRCA model clause in their agreements. The Model Clause can be found under Schedule B of the Rules.

### **3. *What do I do if I do not have a model Mediation clause in my agreement?***

These Rules may also apply where the parties are agreeable that the dispute must be resolved via mediation according to the KLRCA Mediation Rules as a facilitative way of achieving an agreed outcome.

### **4. *What type of disputes can be resolved by Mediation under the KLRCA Mediation Rules?***

The majority of disputes arise out of construction, commodities, insurance, landlord and tenants, distribution agreement or joint research and development (R&D) contracts or any other kind of commercial disputes.

**5. *What are the advantages of using the KLRCA Mediation Rules?***

The KLRCA Mediation Rules are flexible Rules with provisions sensitive to the need for the protection of confidentiality. The KLRCA provides administrative assistance to the Mediator and the parties by making available facilities, through the appointment of Mediators, by providing reasonable fixed schedule of fees and by providing a balance account of the fees and costs applied to the proceedings.

**6. *How do I begin a matter under the KLRCA Mediation Rules?***

A party initiating the Mediation proceedings shall be required to submit a written request to the KLRCA providing the information as required under Rule 3 of the Mediation Rules, pay a non-refundable registration fee of USD50.00 for international Mediations or RM150.00 for domestic Mediations.

**7. *When is the Mediation deemed to have commenced under the KLRCA Mediation Rules?***

Mediation under the auspices of the KLRCA shall be deemed to have commenced when KLRCA receives written notice of the other party's/parties' acceptance of the Request.

**8. *How much will it cost to mediate under the KLRCA Mediation Rules?***

The KLRCA Schedule of Fees will be applicable to the Mediation unless the Mediator and the parties agree otherwise. The cost to mediate would include payment of a non-refundable registration fee by the party initiating the mediation, amounting to USD50.00 for an international Mediation and RM150.00 for a domestic Mediation.

The Mediator's fees are calculated based on the amount of days required for the Mediation as well as the hourly rate for the review of documents and related works. The KLRCA administrative costs are fixed at USD250.00 for international Mediations and RM500.00 for domestic Mediations.

**9. *How are Mediators appointed under the KLRCA Mediation Rules?***

The parties are free to agree upon a proposed Mediator. If, within 30 days of the Request for Mediation under Rule 4, all parties have not agreed upon a proposed Mediator willing to serve and not disqualified under Rule 10, then the Director of KLRCA shall appoint the Mediator and the parties are deemed to have approved the appointment made by the Director of KLRCA.

**10. *Can an appointed Mediator be disqualified under the Rules?***

Yes. If any party objects to the service of the Mediator, the Mediator will be disqualified.

**11. *What happens if parties fail to pay the required fees, costs and expenses?***

Payment of fees, costs and expenses are regulated by Rule 40. If parties fail to pay, the Director of KLRCA shall so inform the parties in order that one or another of them may make the required payment. If any such payment is not made, the Mediator, after consultation with the Director of KLRCA, may order the suspension or termination of the Mediation.

**12. *Are Mediation proceedings confidential in nature?***

Yes. Mediation under the KLRCA Mediation Rules is private and confidential in nature as provided under Rules 19-21. The Mediator, the parties, the participants and the KLRCA shall keep confidential all matters relating to the Mediation proceedings unless disclosure is compelled by law or if it is necessary for purposes of implementation and enforcement or it is with the consent of the parties to the Mediation.

**13. *Are parties restricted to appointing Mediators from the KLRCA's Panel of Mediators or when mediating under the KLRCA Mediation Rules?***

No. There are no restrictions imposed and parties are free to appoint Mediators of their choice.

**14. *How long would the entire proceedings take?***

Under Rule 28(d), the Mediation shall be completed within 3 months from the date of the Request for Mediation under Rule 4 unless parties have agreed otherwise.





REGIONAL RESOLUTION  
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# *Mediation Rules*

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