



KFCRI MEDIATION RULES

[1st Edition, 1st February 2020]

A large, faint watermark of the KFCRI logo is centered on the page. It features a circular emblem with a stylized 'K' and 'C' intertwined, and the text 'KFCRI' below it.

KFCRI

KOVISE FOUNDATION CONFLICT RESOLUTION INTERNATIONAL
Chennai, India

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KFCRI MEDIATION RULES

(w.e.f., 1st February, 2020)

PRELIMINARY

1. SHORT TITLE AND SCOPE

- (1) These rules may be called the KFCRI Mediation Rules (hereinafter referred to as “Rules”).
- (2) These rules shall apply to all mediations administered only by KFCRI. The application of these Rules includes without limitation the following:
- i) Where parties, have an agreement in writing which provides for settlement of disputes between them under these Rules. Such an agreement may have been:
 - a) Entered into before the dispute arose, such as, in the contractual documents itself; or
 - b) Arrived at after the emergence of the dispute on the invitation of one party and acceptance by the other parties; or
 - c) Arrived at on the invitation of KFCRI.
 - ii) To disputes, referred to KFCRI, for mediation by any court of law in India or outside India, including any tribunal, forum, statutory or regulatory authority;
 - iii) To disputes, referred to KFCRI, for mediation by any arbitrator or arbitral tribunal, whether in India or outside India; and
 - iv) To disputes, referred to KFCRI, for mediation by any Private Body;
- (3) Where Mediation, is administered pursuant to the Arb-Med-Arb Rules or Med-Arb Rules, the Rules and the mediation process shall be modified as necessary to be consistent with the terms of the Arb-Med-Arb Rules or Med-Arb Rules. The rules with regards to Mediation Costs in the respective processes will be the same as given in this Rules.

- (4) Mediation shall be used under the Rules unless, prior to the confirmation or appointment of the Mediator or with the agreement of the Mediator, the parties agree upon a different settlement procedure or a combination of settlement procedures.
- (5) In exceptional cases, if the parties wish to modify or waive any provision of the Rules when applicable to them, the parties shall be required to make such request to the Mediator. If, the Mediator, endorses such a modification or waiver, the Mediator shall inform KFCRI in writing of such request. KFCRI may accept the request in whole or part or reject the request in writing stating reasons within 14 working days of receipt of such request.
- (6) To the extent that the Rules conflict with the legislation in India or in any another country or any rules or orders pursuant to such legislation, the Rules shall apply except to the extent that the parties may not lawfully contract out of the provisions of any such legislation, rules, or orders.
- (7) A failure to comply with the Rules is an irregularity and does not render the Mediation or a step, document, or settlement agreement a nullity.

2. DEFINITIONS

In these rules unless the context otherwise requires,

- (a) “Accredited mediator” means a mediator who in accordance with the procedures laid down in the rules and regulations has acquired mediation and accredited which gives the right to be included in the list of accredited mediators;
- (b) “Admission” means a statement, [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances;
- (c) "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (d) "Arbitrator" means a person appointed as arbitrator and includes a chairman/presiding arbitrator;
- (e) “Arb-Med-Arb” shall mean a process where the parties shall attempt to settle the dispute through mediation after initiation of arbitration proceedings. If the dispute

- is not resolved through mediation, the parties shall continue with arbitration. If the dispute is resolved through mediation, the mediation settlement terms shall be referred to the Arbitrator who shall record the consent terms as award through mutual consent under Section 73 of Arbitration and Conciliation Act, 1996;
- (f) “Caucus session” shall mean a session in which either of the parties/representatives along with their respective counsel have a private session with the mediator;
 - (g) “Cross-caucus session” shall mean a session in which either of the parties alone have a private session with the mediator;
 - (h) “Expert” means a person who is very knowledgeable about or skilful in a particular area;
 - (i) "KFCRI" means the Kovise Foundation Conflict Resolution International, as the case may be, any of its Regional/Branch Offices administered by the Committee;
 - (j) “Med-Arb” shall mean the process by which the parties shall first refer the dispute to mediation. If the dispute is not settled through mediation, the mediator shall submit possible terms of settlement to the parties. If the parties agree on the terms of settlement, the mediator shall record the terms of settlement as award through mutual consent under Section 73 of Arbitration and Conciliation Act, 1996. If the parties do not agree to the terms of settlement, the mediator or any other arbitrator appointed by the parties shall conduct arbitration in relation to the dispute;
 - (k) “Mediation” means a voluntary and confidential process of facilitated negotiation where a neutral third party known as the mediator assists parties in to reach a mutually acceptable settlement to their dispute(s);
 - (l) “Mediation Agreement” means an agreement in the form of a clause by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them;
 - (m) “Mediator” means a person who is on the panel of Mediators of KFCRI after undergoing the prescribed training;
 - (n) "Panel of Experts" means the panel of persons approved and maintained from time to time by the Committee to act as experts;

- (o) "Party" means a party to a mediation agreement. It shall include individual, Hindu Undivided Family, Body of Individuals (who is an Indian National or from any country other than India), Co-operative Society, firm/ company (incorporated in India or other than India), body corporate & association of persons whether incorporated or not, Government (includes Government of foreign country), Government organization or Government Undertaking;
- (p) "Pre-mediation session" shall mean any meeting that the parties have with the mediator before the signing of KFCRI mediation agreement;
- (q) "Proceedings" refers to the process beginning with its commencement and ending with its completion or termination pursuant to the Rules.
- (r) "Settlement agreement" shall mean an agreement as a result of mediation by which the parties settle their disputes and which may be drawn up in the form of a separate written document;

CHAPTER I
MEDIATION PROCEEDINGS

3. INITIATION OF MEDIATION-

A. Where there is an Agreement to Refer to the Rules:

- (1) Any party or parties wishing to commence mediation pursuant to the Rules shall file a written Request for Mediation with KFCRI;

The Request shall include:

- a) the names, addresses, telephone numbers, email addresses and any other contact details of the parties to the dispute and of any person(s) representing the parties in the Proceedings;
- b) a description of the dispute including, if possible, an assessment of its value;
- c) a copy of the mediation agreement or clause;
- d) any agreement as to time limits for conducting the mediation, or, in the absence thereof, any proposal with respect thereto;
- e) any agreement as to the language(s) of the mediation, or, in the absence thereof, any proposal as to such language(s);

- f) any agreement as to the location of any physical meetings, or, in the absence thereof, any proposal as to such location;
 - g) any joint nomination by all of the parties of a Mediator or any agreement of all of the parties as to the attributes of a Mediator to be appointed by KFCRI where no joint nomination has been made, or, in the absence of any such agreement, any proposal as to the attributes of a Mediator;
 - h) A copy of any written agreement under which the Request is made.
- (2) Together with the Request, the party or parties filing the Request shall pay non-refundable registration fee Rs. 1000/- hereto in force, no longer than on the date the Request is filed. KFCRI may make no progress until the registration fee is paid and on the default of its payment within 14 days from the date of receipt of request, it is deemed to be understood as withdrawal of request by the party or parties.
- (3) The party or parties filing the Request shall simultaneously send a copy of the Request to all other parties, unless the Request has been filed jointly by all parties.
- (4) KFCRI shall acknowledge receipt of the Request and of the registration fee in writing to the parties.
- (5) Where there is an agreement to refer to the Rules, the date on which the Request is received by KFCRI shall, for all purposes, be deemed to be the date of the commencement of the Proceedings.
- (6) Where the parties have agreed that a time limit for settling the dispute pursuant to the Rules shall start running from the filing of a Request, such filing, for the exclusive purpose of determining the starting point of the time limit, shall be deemed to have been made on the date KFCRI acknowledges receipt of the Request or of the filing fee, whichever is later.

B. Where there is No Prior Agreement to Refer to the Rules

- (1) Any party that wishes to propose referring the disputes to these Rules, to another party, may do so by sending a written Request to KFCRI containing the information specified in “Sub rule- A”, entries a) - h).
- (2) On receipt of such request by a party to a dispute, KFCRI shall send an invitation to mediate, nominating a Mediator or Mediators as the case may be and scheduling the date, time and venue of the 1st session of mediation. The party who receives the invitation for mediation can either attend the mediation session as per the invitation before the mediator, or can notify his inability to attend on the scheduled date or express his objection to the nominated mediator, so that KFCRI can nominate another mediator or reschedule the 1st session based on the convenience of the parties and the mediator. If there is no response from the opposite party or if he fails to appear on the scheduled date, it shall be treated as a refusal to mediate.
- (3) In case the mediation is initiated based on Arb-Med-Arb procedure, KFCRI shall send an invitation to the Parties to attend the first session of mediation, mentioning the name of the Mediator or Mediators as the case may be and the date, time and venue of the 1st session. The parties can either attend the mediation session as per the invitation before the mediator, or can notify his/ their inability to attend on the scheduled date or express his/their objection to the nominated mediator, so that KFCRI can nominate another mediator or reschedule the 1st session based on the convenience of the parties and the mediator. If there is no response from the parties or if one or all the parties fail to appear on the scheduled date, it shall be treated as a refusal to mediate.
- (4) Together with the Request, the party or parties filing the Request shall pay non-refundable registration fee Rs. 1000/- hereto in force, no longer than on the date the Request is filed. KFCRI may make no progress until the registration fee is paid and on the default of its payment within 14 days from the date of receipt of request, it is deemed to be understood as withdrawal of request by the party or parties.

C. The date of commencement of mediation shall be

- (1) The date on which KFCRI receives communication that a matter is referred to KFCRI for mediation by court of law or authority as stated above; or
- (2) The date on which joint request for mediation is filed by all parties to a dispute; or
- (3) The date on which a mediator is appointed for a dispute where one or more parties to a dispute has filed a request for mediation.

4. APPOINTMENT AND NUMBER OF MEDIATOR(s)-

- (1) Upon a receipt of request of a mediation and if the parties have not jointly notified the mediator to KFCRI. KFCRI will provide the parties with a list of no fewer than three persons who would, in KFCRI's view, be qualified to mediate the dispute along with fee schedule and profile of each such person.
- (2) In compiling the list, KFCRI will take into account the nationalities of the parties, the language in which the mediation will be conducted, the place of the mediation and any substantive expertise, particularly domain knowledge that may be required or helpful. Each party may strike up to two names and will number the remaining name(s) in the order of preference. In light of the parties' expressed preferences, KFCRI will appoint the mediator.
- (3) Each party shall return the marked list to KFCRI within seven days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all the nominees appearing on the list.
- (4) If the lists which have been returned do not show a person who is acceptable as a mediator to both the parties, KFCRI shall appoint a mediator with the consent of the parties. KFCRI shall similarly be authorized to do so if a person is not able or does not wish to accept KFCRI's nominees to be the mediator, or if there appears to be other reasons precluding that person from being the mediator, or if the chosen mediator after acceptance seeks to reclude himself/herself and there does not remain on the lists, a person who is acceptable as mediator to both parties.

- (5) If the parties do not consent to the mediator as appointed by any of the above method, the parties are free to appoint any person as they desire and such person shall be a member of KFCRI. Where, such person appointed by the party is not a member of KFCRI, he shall not be permitted to act as mediator, unless he becomes one.
- (6) There shall be one mediator, unless the parties agree that there shall be two or three mediators. Where there is more than one mediator, they ought, as a general rule, to act jointly.
- (7) Before appointment, the nominated mediator shall disclose to KFCRI, any circumstances that are likely to create or will create a bias. The same shall be communicated to the parties. And if it has been brought to the notice of KFCRI that the nominated person has any financial or personal interest in the result of the mediation. The same shall be communicated to the parties.
- (8) Subsequent to the above given circumstances, unless, the parties agree to the appointment of the nominated mediator within 7 days, the replacement mediator shall be appointed in the same manner as provided under this clause.

5. ROLE OF MEDIATOR-

- (1) The mediator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) The mediator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties and the circumstances surrounding the dispute, including any previous practices between the parties. The mediator is bound by the KFCRI Mediator's Professional Code of Conduct.
- (3) The mediator may conduct the mediation proceedings taking into account the circumstances of the case, the wishes that the parties may express, including any

request by a party to the mediator during the oral session and any special need for a speedy settlement of the dispute.

- (4) The mediator is not bound by procedural law such as the Code of Civil Procedure, 1908 or The Evidence Act, 1872 etc. But shall be guided by principles of fairness and justice, having due regard to the rights and obligation of the parties, confidentiality, usages of trade and custom, if any.
- (5) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which effect them.
- (6) After each session of mediation, the Mediator shall submit a filled in Record Form (Model Record form given in Appendix- E), to KFCRI.
- (7) The appointed mediator shall undertake to make himself available for the scheduled mediation proceedings, as fixed by the parties. If the mediator defaults, by not appearing for two scheduled consecutive proceedings, he/she shall be removed from the proceeding.

6. ROLE OF THE PARTIES-

- (1) The parties shall give full assistance to enable the mediation to proceed and be concluded within the time stipulated, by attending every scheduled mediation session.
- (2) The Mediator may at times want to conduct a caucus session or a cross caucus session, the parties shall co-operate with the same.
- (3) All parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes.

7. CONDUCT OF MEDIATION AND AUTHORITY OF MEDIATOR-

- (1) The mediator may conduct the mediation in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute within the ambit of these

Rules. The mediator does not have the authority to impose a settlement on the parties. The mediator is authorized to conduct both joint and separate meetings with the parties. If requested, the mediator may make oral or written recommendations concerning an appropriate resolution of the dispute.

- (2) Where appropriate, KFCRI may arrange for a pre-mediation conference to discuss the manner and procedure for the conduct of the mediation, including setting relevant timelines. For the avoidance of doubt, the pre-mediation conference may take place in person or audio/ visual means.
- (3) Entire mediation process shall not exceed 60 days.
- (4) The mediator may in consensus of both the parties either orally/ writing in person, electronically, or by another means set a date for a subsequent hearing for facilitating the achievement of settlement between the parties if the settlement had not been achieved in the previous hearing.
- (5) The mediator may obtain expert advice or assistance in technical matters with the parties' prior consent from the panel of experts and the parties shall bear any expenses incurred in this regard. The fees pertaining to such assistance will be intimated to the parties once the consent is given and on payment of such amount, the expert shall be engaged to the mediation.
- (6) Where the mediator believes that any issues in dispute between the parties are not susceptible to resolution through mediation, the mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the mediator considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues.
- (7) In particular, the mediator may so propose neutral evaluation of one or more particular issues or an expert determination of one or more particular issues.
- (8) The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

(9) Unless otherwise agreed, a copy of any document that the party(ies) wants to rely/present in the mediation shall be sent to the mediator and to the other party prior 3 days from the date of hearing.

8. PROCEDURE-

(1) The general practice followed is laid down below:

- a) Opening statement by the Mediator(s);
- b) Opening statement by Parties;
- c) Setting of Agenda by the Mediator(s);
- d) Negotiation;
- e) Closing statements by the Parties;
- f) Closing statement by the Mediator(s).

(2) However, the above mentioned procedure does not necessarily be adhered to by the parties and shall follow any procedure that the mediator proposes with the consent of the parties.

9. REPERESANTATION-

(1) Any party may be represented by a person of the party's choice. Representation by counsel is not mandatory. Such persons should acquire proper knowledge about the dispute and are expected to be present throughout the mediation. That person shall be authorized to make decisions concerning the resolution of the dispute and finalization of terms of settlement.

(2) The parties shall inform KFCRI of the names of their representatives and advisors attending the mediation within such time as KFCRI may specify.

(3) Where the party involved in the mediation is a minor, he shall be represented by a natural guardian or a guardian appointed as per the respective personal laws.

10. ADMINISTRATIVE ASSISTANCE-

In order to facilitate the conduct of the mediation proceedings, the parties or the mediator with the consent of the parties may request KFCRI to provide such administrative assistance.

11. CONFIDENTIALITY-

- (1) All information, records, reports or other documents received by a mediator while serving in that capacity will be confidential. The mediator will not be compelled to divulge such records or to testify or give evidence in regard to the mediation in any adversary proceeding or judicial forum. The parties will maintain the confidentiality of the mediation and will not rely upon or introduce as evidence in any arbitral, judicial or other proceeding:
 - a. Views expressed or suggestions or offers made by another party or the mediator in the course of the mediation proceedings except any last offers submitted to arbitration.
 - b. Admissions made by another party in the course of the mediation proceedings relating to the merits of the dispute; or
 - c. The fact that another party had or had not indicated a willingness to accept a proposal for settlement made by another party or by the mediator.
- (2) Where the mediator receives factual information concerning the dispute from a party, he shall only disclose such part of the information as is permitted to be disclosed by the disclosing party.
- (3) Any settlement agreement between the parties shall be kept confidential, except that a party shall have the right to disclose it to the extent that such disclosure is required by applicable law or necessary for purposes of its implementation or enforcement.
- (4) Facts, documents or other things otherwise admissible in evidence in any arbitral, judicial or other proceeding will not be rendered inadmissible by reason of their use in the mediation.

- (5) Each person involved in the mediation, including, in particular, the mediator, the parties and their representatives and advisors, any independent experts and any other persons present during the meetings of the parties with the mediator, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation. Every such person shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

12. MEDIATOR'S ROLE IN SUBSEQUENT PROCEEDINGS-

The mediator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of the mediation or any other dispute in connection with the same contract.

13. EXCLUSION OF LIABILITY AND INDEMNITY-

- (1) The parties jointly and severally release, discharge and indemnify the mediator and KFCRI in respect of all liability whatsoever, whether involving negligence or not, from 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, dishonesty or violation of Mediators' Professional Code of Conduct.
- (2) Neither KFCRI nor the mediator shall be summoned by any party to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.
- (3) Mediation is a voluntary process. Therefore, none of the parties availing the services of KFCRI shall hold it or any of its officers, staff, Executive Board members, Executives, Mediators liable for any loss or damage that they may claim to suffer during any process of dispute resolution and keep KFCRI, its officers, staff, Executive Board members, Executives and Mediators indemnified.

14. TERMINATION OF MEDIATION-

- (1) The mediation process shall come to an end:
 - a) Upon the signing of a settlement agreement by the parties or;
 - b) Upon the written advice of the mediator after consultation with the parties that in his opinion further attempts at mediation are no longer justified or;
 - c) Upon written notification by any party at any time to the mediator and the other parties that the mediation is terminated.
- (2) In case of mediation under the Arb-Med-Arb procedure, the parties have fully or partially resolved the dispute, a copy of the settlement agreement shall also be forwarded to the Arbitral Tribunal.

15. DEPOSITS, FEES AND COSTS-

- (1) Once the mediation has commenced, the parties shall deposit a certain amount inclusive of mediator's fee along with the administrative and other expenses as specified in the Appendix-D within 7 business days from the date of commencement of mediation.
- (2) The currency shall be INR, unless otherwise specified by KFCRI.
- (3) The mode of payment may be RTGS, NEFT, IMPS, UPI and/or any other mode that KFCRI may specify.
- (4) KFCRI shall acknowledge the payment of deposit once it has been received by way of a receipt.
- (5) KFCRI may require the parties within 3 business days from the date of notice from KFCRI for the same, to make supplementary deposits, required to meet the expenses if the mediation exceeds the time that was initially contracted for. Until the payment of such additional deposit, the proceedings may be suspended.
- (6) After the termination of the mediation, KFCRI shall render an accounting to the parties of any deposits made and return any unexpended balance to the parties or require the payment of any amount owing from the parties.
- (7) If settlement has been arrived between the parties even before the expiry of the contracted period of mediation, deposit shall not be returned.

- (8) In the event of default in payment of the requisite deposit within the days mentioned in clause 1 and 6 of this rule, after a reminder notice in writing, KFCRI shall terminate the proceedings.
- (9) All deposits and expenses may be equally borne by the parties, unless otherwise agreed.
- (10) Any party is free to pay the unpaid balance of any deposits and costs should another party fail to pay its share.
- (11) All payments done by the parties to KFCRI will be construed as donation and can claim deductions/exemption from tax liability as provided under Section 80G of the Income Tax Act, 1961.

16. ACTION AGAINST THE MEDIATOR-

The parties shall inform within a period of one month to KFCRI, if they feel that the mediator has violated the KFCRI's Mediator's Professional Code of Conduct.

17. SETTLEMENT AGREEMENT-

- (1) Any settlement agreement reached in the course of mediation shall be in writing and signed by or on behalf of the parties.
- (2) For the avoidance of doubt, a settlement agreement may take the form of an electronic record and be signed by electronic signature
- (3) Where any settlement agreement has been reached, the mediator shall notify KFCRI of the same and provide KFCRI with a copy of such agreement.
- (4) A settlement agreement may be recorded substantially in the format set out in the form (APPENDIX-A).

18. CASES NOT PROVIDED FOR BY THE RULES-

In all cases not provided for by the Rules, the Mediator shall decide. In doing so the Mediator shall act in accordance with the purport of the Rules.

19. REMOVAL OF DIFFICULTIES-

If any difficulty arises in giving effect to the provisions of these Rules, the Managing Committee of KFCRI may, by a notification published in the Official Website, make such provisions, not inconsistent with the provisions of these Rules as appear to the Managing Committee to be necessary or expedient for removing the difficulties.

20. POWER TO REPEAL OR AMEND-

The Managing Committee of KFCRI may, by a notification published in the Official Website, make any Amendment or Repeal any Provision of these Rules as appear to the Managing Committee to be necessary or expedient.

CHAPTER-II
PROFESSIONAL CODE OF CONDUCT

The KFCRI Code of Professional Conduct (“the Code”) provides users of mediation services with a concise statement of the ethical standards they can expect from KFCRI Accredited Mediators.

DEFINITIONS-

For the purposes of this Code, Mediation is defined as a process in which a third-party (the KFCRI Accredited Mediator) assists parties in engaging in a dialogue oriented towards managing or resolving a dispute.

A KFCRI Accredited Mediator (also called a Mediator in this Code) is one

- whose competency in the practice of mediation has been Accredited by KFCRI, and
- who is authorized by KFCRI to use the KFCRI name and logo,

1. MEDIATOR APPOINTMENT

1.1 Entitlement to use the title “KFCRI Accredited Mediator” and the KFCRI logo

In the event that a KFCRI Accredited Mediator fails to maintain KFCRI requirements for certification, or no longer qualifies as an KFCRI Accredited Mediator, use of the title KFCRI Accredited Mediator and use of the KFCRI name and logo will end.

1.2 Promotion of Mediators’ services

Subject to applicable laws and to regulations governing professional practice, Mediators will present and promote their practice truthfully and accurately. They may quote freely from, and link to, their Profile on the KFCRI web portal and they are free to replicate that Profile, or extracts from it, for their own professional purposes.

1.3 Appointment

- a. Before the mediation begins, Mediators will inform the parties of their relevant background and experience.
- b. Mediators will advise parties that they will be invited to offer the Mediator feedback on the process at any stage, including offering written feedback at the conclusion of the mediation.
- c. Mediators will, prior to appointment, conduct reasonable inquiries to determine if any pre-existing relationship or interest in the subject matter of the dispute creates a real or perceived conflict of interest. The mediator will disclose any such interests and obtain the parties' consent to continue. Regardless of party consent, if the mediator thinks that the relationship or interest poses a threat to the mediator's ability to conduct the mediation impartially, the mediator shall decline the appointment.

2. DILIGENCE

Mediators may accept an assignment to act as Mediator in any situation in which they are competent to serve in that capacity. Mediators should ensure that they have the requisite time, energy and procedural and subject matter expertise to competently meet the reasonable expectations of the parties.

3. IMPARTIALITY

- a. Mediators will always conduct mediation in an impartial manner, avoiding bias or prejudice in favour or against any party. Bias or favouritism can result from several sources: mediator reaction to a mediation participant's personal characteristics, background or values; mediator personal, professional or financial interests in the subject matter of the dispute; or pre-existing relationships with any mediation participant. If at any time a Mediator feels unable to conduct the process in an impartial manner, he/she will express that concern and withdraw from the mediation.

- b. Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or be perceived to, materially affect their impartiality. This duty to disclose is a continuing obligation throughout the mediation process.
- c. The existence of relationships or interests potentially affecting, or appearing to affect, a Mediator's impartiality will not automatically imply unfitness to act as a mediator, provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.
- d. The duty to disclose perceived or actual threats to Mediator impartiality is ongoing. Newly discovered interests or relationships creating an actual or perceived threat to Mediator impartiality must be disclosed and parties must renew their consent to proceed with the process.
- e. Following any such disclosures, if any party raises an objection, the Mediator will withdraw from the mediation.
- f. After accepting appointment, and until the mediation process ends, Mediators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to create an actual or perceived threat to mediation impartiality. In the case of perceived threats, mediators may proceed after full disclosure and party consent.
- g. Within 12 months following the end of a mediation, Mediators will not represent in an advisory capacity or accept employment with any party to a mediation in the same or a substantially related matter, unless all parties to the mediation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (e.g. as a mediator or arbitrator) that may involve some or all of the parties will not be considered a representation in an advisory capacity for the purposes of this clause.

4. MEDIATION PROCESS

4.1 Procedure

Mediators will endeavour to ensure that the parties to the mediation and their advisers understand the characteristics of the mediation process, their roles as parties and advisers,

and the role of a mediator, as well as the enforceability of any resulting agreement. The Mediator will ensure that before the mediation begins, the parties have understood and agreed to the terms and conditions which will govern the mediation including those relating to Mediator and party obligations to respect Mediator confidentiality. It is best practice for those terms to be contained in a written Agreement to Mediate, unless the parties or the circumstances dictate otherwise.

4.2 Fairness and Integrity of the process

- a. Mediators will explain the mediation process to the parties and their advisers, and be satisfied that they consent to the process being used and to the Mediator selected (unless applicable law, court rules or contract require use of a particular process and/or mediator). Mediators will ensure that all parties are aware that they have an equal opportunity to engage in pre-mediation private communications with the Mediator.
- b. Mediators will conduct the process with attention to procedural fairness to all parties. The Mediator will take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution.
- c. Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached in mediation or create or aggravate a hostile environment. Mediators will endeavour to ensure that the parties have reached agreement of their own volition and knowingly consent to any resolution.

4.3 Termination of the process

- a. The Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator of that preference (unless applicable law, court rules or contract require otherwise).
- b. Mediators shall withdraw from a mediation if a negotiation among the parties appears to be moving towards an unconscionable or illegal outcome. An unconscionable outcome is one which is the product of undue pressure, exploitation or duress. An unconscionable outcome reflects one party's exploitation of an existing power

imbalance to the degree that the resulting agreement “shocks the conscience” and violates accepted legal and cultural norms of fairness.

4.4 Feedback

Unless inappropriate in the circumstances, Mediators will, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete an KFCRI Feedback Request Form and return it to the Mediator or to the Reviewer indicated by the Mediator in his/her KFCRI Profile to assist in the preparation of the Mediator’s Feedback Digest.

4.5 Fees

- a. Mediators will, before accepting appointment, agree with the parties how their fees and expenses will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions). Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.
- b. Mediators will not suggest to the parties that their remuneration should be based on, or related to, the outcome of the mediation.

5. CONFIDENTIALITY

- a. Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation unless:
 - Compelled to make a disclosure by law or by some governmental agency having appropriate authority and jurisdiction, or
 - Arising under paragraph 5.1, in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality, or
 - The specific information comes into the public domain (otherwise than as a result of a disclosure by the Mediator), or

- The parties release the Mediator from the confidentiality restriction, or as necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability, or
 - Disclosure is necessary to prevent death or imminent bodily harm or severe damage to an identifiable third party or to prevent the commission of illegal and morally objectionable acts. Before using or disclosing such information, if not otherwise required to be disclosed by law, Mediators should make a good faith effort to persuade the party, and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.
- b. The Mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided none of the details of that case are disclosed.
- c. Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.
- d. At no time following the end of a mediation will Mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent.

6. PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

- a. A KFCRI Accredited Mediator may consult his/her Reviewer about any professional or ethical dilemmas.
- b. A party to mediation who believes there has been a lack of compliance with this Code may activate the KFCRI Professional Conduct Assessment Process.
- c. Adherence to this Code does not replace or qualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply in specific circumstances.

APPENDICES

APPENDIX-A

MODEL SETTLEMENT AGREEMENT FORM

CASE NUMBER:

Party A's name:

Counsel:

Party B's name:

Counsel:

Mediator(s) name:

Mediation service provider:

Date of agreement:

Terms of settlement:

By consent and in full and final settlement of ___ claims:

[___ shall pay the following to ___]

To specify payment dates and when interest shall run.

[Other terms of settlement]

(May be deleted/ modified as necessary)

Party A's signature:

Party B's signature:

APPENDIX-B
MODEL MEDIATION AGREEMENT

This Mediation Agreement (the “Agreement”) is made on _____ between _____ (collectively referred to as “the Parties” and individually as a “Party”) and [Insert name and address of the mediator] (“the Mediator”).

WHEREAS

- A. A dispute (briefly described in Schedule 1 and called “the Dispute”) has arisen between the Parties, and
- B. The Parties have requested the Mediator to assist them to resolve the Dispute by mediation (the “Mediation”) in accordance with the terms of the Agreement.

IN CONSIDERATION of the mutual agreements set out below

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **THE MEDIATOR, MEDIATION DATES, VENUE AND RECOMMENDATION**

- a) The Parties appoint the Mediator to assist them to resolve the Dispute in accordance with the Agreement.
- b) If the date or dates and venue of the Mediation are not agreed between the parties by themselves, they shall be determined in writing by the Mediator after consultation with the Parties.
- c) If the Parties are unable to reach a settlement during the Mediation, and only if all the Parties so request and the Mediator agrees, the Mediator may produce for the Parties a non-binding recommendation on possible processes or terms of settlement. This will not attempt to anticipate what a court or arbitrator might order or award but will set out what the Mediator suggests are appropriate ways of resolving any outstanding issues or possible settlement terms in all of the circumstances of the Dispute.

2. **MEDIATION RULES**

The Mediation Rules of KFCRI effective as on the date of parties entering into the agreement are incorporated into, and form part of, the Agreement. If, any further amendments to the rules are made after the signing of agreement, the same shall be communicated to the parties by the mediator and the mediation will resume/ begin only after the parties agree to the amended rules.

3. CONFIDENTIALITY AND PRIVILEGE

- a) As a pre-condition to attendance of any person at the Mediation, that person must sign the agreement.
- b) Following termination of the Mediation, the provisions of Rule 10 of the Mediation Rules shall continue in effect as to all information (whether given orally, in writing or otherwise) produced for, or arising out of or in connection with, the Mediation passing between any of the Parties and/or between any of them and the Mediator and made for the purposes of the Mediation.
- c) The Mediator shall be under no obligation whatsoever to retain any documents or electronic records made or obtained for the purposes of the Mediation. The Mediator may destroy or delete such materials at any time after termination of the Mediation under Rule 13 of the Rules.

4. START DATE AND TERMINATION OF THE MEDIATION

- a) The Mediation shall begin on the date agreed between the parties and the same shall be communicated to KFCRI.
- b) The Mediation shall terminate either under the provisions Rule 13 of the Mediation Rules or, in default of termination under the said Rule, 28 days after the date fixed for the Mediation (or, where more than one date is agreed, the last of such dates) unless expressly otherwise agreed in writing and signed by the Parties.

5. PAYMENT

*Parties shall mention the slab chosen from the APPENDIX-D in detail.

6. EXCLUSION OF LIABILITY AND INDEMNITY

None of the Parties may call the Mediator as a witness in any litigation, arbitration or adjudication in relation to or arising out of the Dispute and/or the Mediation. In the event that any Party, in breach of this provision, calls the Mediator as a witness, that Party shall indemnify and hold harmless the Mediator from and against all and any costs, including legal costs that the Mediator may thereby incur.

7. MISCELLANEOUS

Any claim(s), controversy(ies), difference(s), dispute(s) between the parties and KFCRI arising out of or in connection with the present agreement shall be finally settled under the Rules of Arbitration of the Kovise Foundation Conflict Resolution International (KFCRI) by one or more arbitrators appointed in accordance with the said rules.

IN WITNESS WHEREOF, the Parties and the Mediator have caused this Agreement to be executed by their undersigned duly authorised representatives

For: _____

[Insert name of Party]

By:

KFCRI

.....
Signature

For: _____

[Insert name of Party]

By:

.....

Signature

For: _____

[Insert name of Party]

By:

.....

Signature

[PLEASE ADD ANY ADDITIONAL SIGNATURE LINES AS ARE NECESSARY]

APPENDIX-C

KFCRI MEDIATION CLAUSE

For use before a dispute arises:

“All disputes, controversies or differences 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 KFCRI Mediation Rules for the time being in force.”

For use after a dispute has arisen:

“All disputes, controversies or differences arising out of in connection with this contract including any question regarding its existence, validity or termination, notwithstanding the commencement of any other proceedings, shall be referred to mediation in accordance with the KFCRI Mediation Rules for the time being in force.”

APPENDIX-D
FEE SCHEDULE

Where the value of the case can be determined in terms of money-

VALUE (Rupees)	MEDIATOR'S FEE (% of Claim)	ADMINISTRATIVE EXPENSES
49,999 and below	Rs. 3,000/-	0.5%
From 50,000 to 4,99,999	5%	
From 5,00,000 to 9,99,999	4%	
From 10,00,000 to 49,99,999	3%	
From 50,00,000 to 99,99,999	2.5%	
From 1,00,00,000 to 4,99,99,999	2%	
From 5,00,00,000 to 9,99,99,999	1.5%	
10,00,00,000 and above	1%	

Where the value of the case cannot be determined in terms of money-

* The Mediator fee can range from Rs. 2,500/- to 5,000/- per hour, or as determined by KFCRI.

*The fee depends on the mediator that the party chooses.

* 10% of the fee shall be paid as administrative expenses to KFCRI.

* All of the above given details applies to **an hour**.

APPENDIX-E
MODEL RECORD FORM

DATE: _____

VENUE: _____

DURATION: _____ (In hours)

MEDIATOR: _____

PARTIES:

NAME OF PARTY A: _____

PRESENT

ABSENT

REPRESENTED BY:

[To be filled, only if the party is represented by a person other than himself]

COUNSEL: _____

NAME OF PARTY B: _____

PRESENT

ABSENT

REPRESENTED BY:

[To be filled, only if the party is represented by a person other than himself]

COUNSEL: _____

NEXT SESSION:

DATE: _____

TIME: _____

VENUE: _____

SIGNATURE:

PARTY A

PARTY B

MEDIATOR