



NATIONAL ASSOCIATION TO STOP COUNTERFEITING AND PIRACY

NASCAP IPR ARBITRATION & MEDIATION ("NIAM") CENTER

NIAM MEDIATION CODE, 2019

(EFFECTIVE, FEB 2019)

ADAPTED FROM WIPO MEDIATION RULES EFFECTIVE, 2016, AS AMENDED TILL DATE, AND
IN COMPLIANCE TO INDIAN ARBITRATION & CONCILIATION ACT, 1996, AS AMENDED TILL DATE



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The Preamble:

The NIAM Mediation Code, 2019 effective February, 2019 are adapted from the enactment of World Intellectual Property Organization (“WIPO”), 2016 and are in Compliance to Indian Arbitration and Conciliation Act, 1996, as amended till date.

The Code is aimed to deal with increasing complexity of disputes involving violations of Intellectual Property Rights, Cyber Laws, E-Commerce, and Techno-Commercial Contracts, wherein special inputs in multidisciplinary subjects like Law, Sciences, Mathematics, Engineering and Accountancy is required to adjudicate matters in an expedited manner. The provisions of the Code will be invoked upon any consenting or invoking parties agreeing to adjudicating disputes under the Rules and Regulations framed herein under, as amended from time to time.

The Code is applicable to all parties within the Republic of India, or with International Part(ies), having at least One Party to dispute within the jurisdiction of Republic of India.

Article 1: Abbreviated Expressions

In these Rules:

"*Mediation Agreement*" means an agreement by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them; a Mediation Agreement may be in the form of a mediation clause in a contract or in the form of a separate contract;

"*Mediator*" includes a sole mediator or all the mediators where more than one is appointed;

"*WIPO*" means the World Intellectual Property Organization;

"*Center*" means the NASCAP IPR Arbitration and Mediation Center.

Words used in the singular include the plural and vice versa, as the context may require.

Article 2: Scope of Application of Rules

Where an Agreement provides for mediation under the NASCAP IPR Mediation Code, these Rules shall be deemed to form part of that Mediation Agreement. Unless the parties have agreed otherwise, these Rules as in effect on the date of the commencement of the mediation shall apply.



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Article 3: Commencement of the Mediation

- a) A party to a Mediation Agreement that wishes to commence a mediation shall submit a Request for Mediation in writing to the Center. It shall at the same time send a copy of the Request for Mediation to the other party.
- b) The Request for Mediation shall contain or be accompanied by:
 - i. the names, addresses and telephone, e-mail or other communication references of the parties to the dispute and of the representative of the party filing the Request for Mediation;
 - ii. a copy of the Mediation Agreement; and
 - iii. a brief statement of the nature of the dispute.

Article 4: One Party Invoking Mediation (Pre-Suits)

- a) In the absence of a Mediation Agreement, a party that wishes to propose submitting a dispute to mediation shall submit a Request for Mediation in writing to the Center. It shall at the same time send a copy of the Request for Mediation to the other party. The Request for Mediation shall include the particulars set out in Article 3(b)(i) and (iii). The Center may assist the parties in considering the Request for Mediation.
- b) Upon request by a party, the Center may appoint an external neutral to assist the parties in considering the Request for Mediation. The external neutral may act as mediator in the dispute provided all parties agree. Articles 15 to 18 shall apply mutatis mutandis.

Article 5: Commencement of the Mediation

The date of the commencement of the mediation shall be the date on which the Request for Mediation is received by the Center.

Article 6: Notice to Parties of Commencement of Proceedings

The Center shall forthwith inform the parties in writing of the receipt by it of the Request for Mediation and of the date of the commencement of the mediation.

Article 7: Appointment of the Mediator

- a) Unless the parties have otherwise agreed themselves on the person of the mediator or on another procedure for appointing the mediator, the appointment shall take place in accordance with the following procedure:
 - i. The Center shall send to each party an identical list of candidates. The list shall normally comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a statement of each candidate's



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qualifications. If the parties have agreed on any particular qualifications, the list shall contain the names of candidates that satisfy those qualifications.

- ii. Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.
 - iii. Each party shall return the marked list to the Center 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 candidates appearing on the list.
 - iv. As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, the Center shall, taking into account the preferences and objections expressed by the parties, appoint a person from the list as mediator.
 - v. If the lists which have been returned do not show a person who is acceptable as mediator to both parties, the Center shall be authorized to appoint the mediator. The Center shall similarly be authorized to do so if a person is not able or does not wish to accept the Center's invitation to be the mediator, or if there appear to be other reasons precluding that person from being the mediator, and there does not remain on the lists a person who is acceptable as mediator to both parties.
- b) Notwithstanding the procedure provided in paragraph (a), the Center shall be authorized to otherwise appoint the mediator if it determines in its discretion that the procedure described therein is not appropriate for the case.
- c) The prospective mediator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

Article 8: Mediator's Requirements

The mediator shall be neutral, impartial and independent.

Article 9: Representation of Parties and Participation in Meetings

- a) The parties may be represented or assisted in their meetings with the mediator.
- b) Immediately after the appointment of the mediator, the names and addresses of persons authorized to represent a party, and the names and positions of the persons who will be attending the meetings of the parties with the mediator on behalf of that party, shall be communicated by that party to the other party, the mediator and the Center.



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Article 10: Conduct of the Mediation

The mediation shall be conducted in the manner agreed by the parties. If, and to the extent that, the parties have not made such agreement, the mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted.

Article 11: Co-operation

Each party shall cooperate in good faith with the mediator to advance the mediation as expeditiously as possible.

Article 12: Mediator's communications

The mediator shall be free to meet and to communicate separately with a party on the clear understanding that information given at such meetings and in such communications shall not be disclosed to the other party without the express authorization of the party giving the information.

Article 13: Mediation Proceedings

- a. As soon as possible after being appointed, the mediator shall, in consultation with the parties, establish a timetable for the submission by each party to the mediator and to the other party of a statement summarizing the background of the dispute, the party's interests and contentions in relation to the dispute and the present status of the dispute, together with such other information and materials as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.
- b. The mediator may at any time during the mediation suggest that a party provide such additional information or materials as the mediator deems useful.
- c. Any party may at any time submit to the mediator, for consideration by the mediator only, written information or materials which it considers to be confidential. The mediator shall not, without the written authorization of that party, disclose such information or materials to the other party.

Article 14: Role of the Mediator

- a) The mediator shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the parties.
- b) 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



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parties, to lead to the most efficient, least costly and most productive settlement of those issues. In particular, the mediator may so propose:

- i. an expert determination of one or more particular issues;
- ii. arbitration;
- iii. the submission of last offers of settlement by each party and, in the absence of a settlement through mediation, arbitration conducted on the basis of those last offers pursuant to an arbitral procedure in which the mission of the arbitral tribunal is confined to determining which of the last offers shall prevail.

Article 15: No Recordings

No recording of any kind shall be made of any meetings of the parties with the mediator.

Article 16: Confidentiality

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. Each such person shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

Article 17: Non retention of Material

Unless otherwise agreed by the parties, each person involved in the mediation shall, on the termination of the mediation, return, to the party providing it, any brief, document or other materials supplied by a party, without retaining any copy thereof. Any notes taken by a person concerning the meetings of the parties with the mediator shall be destroyed on the termination of the mediation.

Article 18: Non admissibility of Mediation Proceedings

Unless otherwise agreed by the parties, the mediator and the parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitration proceeding:

- i. any views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- ii. any admissions made by a party in the course of the mediation;
- iii. any proposals made or views expressed by the mediator;
- iv. the fact that a party had or had not indicated willingness to accept any proposal for settlement made by the mediator or by the other party.

Article 19: Termination of the Mediation

The mediation shall be terminated:

- (i) by the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;



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- (ii) by the decision of the mediator if, in the mediator's judgment, further efforts at mediation are unlikely to lead to a resolution of the dispute; or
- (iii) by a written declaration of a party at any time after a first discussion of the parties with the mediator.

Article 20: Consequences of Termination of Mediation

- i. Upon the termination of the mediation, the mediator shall promptly send to the Center a notice in writing that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall send to the parties a copy of the notice so addressed to the Center.
- ii. The Center shall keep the said notice of the mediator confidential and shall not, without the written authorization of the parties, disclose either the existence or the result of the mediation to any person.
- iii. The Center may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

Article 21: No Conflict of Interest

Unless required by a court of law or authorized in writing by the parties, the mediator shall not act in any capacity whatsoever, otherwise than as a mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the dispute.

Article 22: Administration Fee

- a) The Request for Mediation shall be subject to the payment to the Center of an administration fee (Schedule A), the amount of which shall be fixed in accordance with the Schedule of Fees applicable on the date of the Request for Mediation.
- b) The administration fee shall not be refundable.
- c) No action shall be taken by the Center on a Request for Mediation until the administration fee has been paid.
- d) If a party who has filed a Request for Mediation fails, within 15 days after a reminder in writing from the Center, to pay the administration fee, it shall be deemed to have withdrawn its Request for Mediation.

Article 23: Fees of the Mediator

- a) The amount and currency of the fees of the mediator and the modalities and timing of their payment shall be fixed by the Center, after consultation with the mediator and the parties.
- b) The amount of the fees shall, unless the parties and the mediator agree otherwise, be calculated on the basis of the hearing or, if applicable, daily indicative rates set out in the Schedule of Fees (Schedule-A) applicable on the date of the Request for Mediation.



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Article 24: Deposits

- a) The Center may, at the time of the appointment of the mediator, require each party to deposit an equal amount as an advance for the costs of the mediation, including, in particular, the estimated fees of the mediator and the other expenses of the mediation. The amount of the deposit shall be determined by the Center.
- b) The Center may require the parties to make supplementary deposits.
- c) If a party fails, within 15 days after a reminder in writing from the Center, to pay the required deposit, the mediation shall be deemed to be terminated. The Center shall, by notice in writing, inform the parties and the mediator accordingly and indicate the date of termination.
- d) After the termination of the mediation, the Center 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.

Article 25: Costs

Unless the parties agree otherwise, the administration fee, the fees of the mediator and all other expenses of the mediation, including, in particular, the required travel expenses of the mediator and any expenses associated with obtaining expert advice, shall be borne in equal shares by the parties.

Article 26: Exclusion of Liability

Except in respect of deliberate wrongdoing, the mediator and the Center shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.

Article 27: Waiver of Defamation

The parties and, by accepting appointment, the mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Article 28: Suspension of Running of Limitation Period under the Statute of Limitations

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under any applicable statute of limitations or an equivalent rule shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.



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SCHEDULE – A: REGISTRATION FEE

A fixed and non-refundable Registration Fees of Rs. 5,000/- will be deposited by Party Invoking the Mediation Proceedings.

Per Hearing Fees of Rs. 2500/- will be paid by Both the Parties as a Mediator Fees.

The above charges are irrespective of the Claim Amount.