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**SYMBIOSIS CENTRE FOR  
ALTERNATE DISPUTE RESOLUTION**

**PART A**

**ARBITRATION RULES, 2019**

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**PART B**

**MEDIATION & CONCILIATION RULES, 2019**

## TABLE OF CONTENTS

<b>PART - A</b> .....	<b>4</b>
1. DEFINITIONS .....	4
2. PANEL OF ARBITRATORS .....	5
3. REQUEST FOR ARBITRATION .....	5
4. RESPONSE TO THE REQUEST FOR ARBITRATION.....	6
5. DISCOVERY AND INSPECTION OF DOCUMENTS .....	7
6. AUTHORITY TO REPRESENT AND ASSIST THE PARTY .....	8
7. DISCLOSURES .....	8
8. APPOINTMENT OF ARBITRATORS.....	9
9. APPOINTMENT IN CASE OF MULTIPARTY ARBITRATION.....	9
10. CHALLENGE OF ARBITRATORS .....	10
11. TERMINATION AND SUBSTITUTION .....	11
12. FAST TRACK ARBITRATION .....	12
13. FAST TRACK PROCEDURE.....	13
14. EMERGENCY ARBITRATION .....	13
15. TERMS OF REFERENCE AND ARBITRATION SCHEDULE.....	15
16. APPOINTMENT OF EXPERTS.....	16
17. EVIDENCE .....	17
18. HEARINGS .....	18
19. WITNESSES .....	18
20. LAWS APPLICABLE TO THE SUBSTANCE OF THE DISPUTE .....	19
21. LAWS APPLICABLE TO THE ARBITRATION PROCEEDINGS.....	19
22. ORDERS OF THE TRIBUNAL.....	19
23. ARBITRAL AWARD .....	20

<b>PART – B</b> .....	<b>21</b>
<b>1. DEFINITION CLAUSE</b> .....	<b>21</b>
<b>2. INTRODUCTION AND SCOPE OF APPLICATION</b> .....	<b>21</b>
<b>3. INITIATION OF MEDIATION/CONCILIATION PROCESS-</b> .....	<b>22</b>
<b>4. APPOINTMENT OF MEDIATOR/CONCILIATOR</b> .....	<b>23</b>
<b>5. MEDIATION/CONCILIATION PROCESS</b> .....	<b>23</b>
<b>6. ROLE OF MEDIATOR/CONCILIATOR</b> .....	<b>24</b>
<b>7. ROLE OF THE PARTIES</b> .....	<b>25</b>
<b>8. ROLE OF SCADR</b> .....	<b>26</b>
<b>9. REPRESENTATION</b> .....	<b>26</b>
<b>10. CONFIDENTIALITY</b> .....	<b>27</b>
<b>11. SETTLEMENT</b> .....	<b>28</b>
<b>12. TERMINATION</b> .....	<b>28</b>
<b>13. COSTS-</b> .....	<b>29</b>
<b>14. MEDIATOR’S/CONCILIATOR’S ROLE IN SUBSEQUENT PROCEEDINGS</b> ...	<b>30</b>
<b>15. NOT LEGAL COUNSEL OR EXPERT</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>16. EXCLUSION OF LIABILITY</b> .....	<b>30</b>
<b>17. ACTION AGAINST THE MEDIATOR/CONCILIATOR</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>18. INDEMNITY</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>19. INTERPRETATION</b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>

## PART - A

### **1. DEFINITIONS–**

1.1 In these rules, unless the context otherwise requires

- a) “Act” means the Arbitration and Conciliation Act, 1996 and the amendments thereto or any re-enactment thereof;
- b) “Arbitral Award” includes an interim, a partial or a preliminary award;
- c) “Arbitral Tribunal” means a Tribunal consisting of one or more odd number of Arbitrators not exceeding five.
- d) “Arbitrator” means a person appointed an Arbitrator in terms of the Act or under these Rules;
- e) “Board of Governors” means the Governors nominated by appropriate authority;
- f) “Centre” means SCADR Arbitration Centre
- g) “Chief Executive Officer” means person appointed to the Centre under these Rules.
- h) “Confirming Party” means a party to an arbitration agreement who has signed the Terms of Reference.
- i) “Coordinator” means a person in the capacity of an Administrative Officer for the Symbiosis Law School, Pune.
- j) “Director” and “Deputy Director” means the person appointed to the Centre under these Rules.
- k) “Directorate” means the body consisting of The Director, The Deputy Directors, The Staff and Research Assistants of the Centre.
- l) “Expert” means a person who is specialized in a particular subject or field, under these Rules to assist the Arbitral Tribunal.
- m) “Joint Memorandum” means a memorandum jointly signed by the parties in the format as provided at Schedule-I or Schedule 1(A), as the case may be.
- n) “Panel of Arbitrators” means the Panel of Arbitrators constituted in accordance with these Rules.
- o) “Party” means a party who has signed the Joint Memorandum.
- p) “President” means a sitting Judge of the appropriate High Court.
- q) “Secretariat” means an Organizational Structure as laid down in an annexure to these Rules.

## **2. BOARD OF GOVERNORS–**

2.1 The Board of Governors shall be constituted

2.1 The Board of Governors shall constitute a Panel of Arbitrators from amongst eligible and willing persons.

2.2 The Directorate shall maintain a Panel of Arbitrators with the relevant information regarding their qualifications, experience and current availability.

2.3A party may request, at any time, the Board of Governors to add new names to the Panel or remove any person from the Panel.

## **3. REQUEST FOR ARBITRATION–**

3.1 Arbitration Proceedings under these rules shall commence:-

- a) on receipt of an order of a Court referring the parties to arbitration; or
- b) when a party makes a request in writing to the Centre in accordance with Rule 4.2 to commence the arbitration, whichever is earlier.

3.2 When a party files with the Coordinator a Written Request for Arbitration it shall contain or be accompanied by:

- a) Provisional Terms of Reference; if any;
- b) Order of the Court referring the parties to Arbitration;
- c) A request that the dispute be referred to arbitration;
- d) the full terms of the arbitration clause or the separate arbitration agreement that is invoked;
- e) A copy of the contract(s) or another instrument(s) out of or in relation to which the dispute arises;
- f) The full names and contact details, including postal address(es), telephone number(s), facsimile number(s) and electronic mail address(es), to the extent known, of the parties to the arbitration and their legal representatives, if any;
- g) a statement briefly describing the nature and circumstances of the dispute and the claims advanced by the Claimant against any other party to the arbitration, each such party being here separately described as the “Respondent”, specifying the relief

claimed, including the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;

- h) a statement of any matters which the parties have previously agreed to as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal (such as the number of arbitrator(s), the applicable rules of law, the language(s) of the arbitration, and the seat of arbitration);
- i) unless the parties have agreed otherwise or an arbitrator has been named by the Court, the nomination of an arbitrator, if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator;

**Explanation-** In any event, the party making a request for arbitration shall inform the centre in writing of the name of arbitrator(s) not later than 21 days from the date of the first submission of the request for arbitration.

- j) confirmation that copies of the Request for Arbitration and any documents have been or are being served simultaneously on all other parties, specifying the mode of service employed and the date of service, to be supported then or as soon as possible thereafter by documentary proof satisfactory to the Coordinator of actual delivery including the date of delivery; and
- k) confirmation that the requisite administrative charges have been paid.

3.3 Party making request for Arbitration may also file Statement of Claim along with the request.

3.4 The contents of the Request for Arbitration do not prevent a party from subsequently adding, supplementing or amending in its pleadings the matters referred to arbitration or the reliefs claimed, subject to Rule 18, provided that such matters and reliefs fall within the scope of the arbitration agreement.

#### **4. RESPONSE TO THE REQUEST FOR ARBITRATION –**

4.1 The Respondent shall simultaneously send to the party making a request for Arbitration and the Centre a response within 30 days of receipt of the Request for Arbitration. The Response shall contain or be accompanied by:

- a) A confirmation or denial of all or part of the claims, including the Claimant's invocation of the arbitration agreement in support thereof;
- b) the full names and contact details (including postal address(es), telephone number(s) and mobile number(s), facsimile number(s) and electronic mail address(es) of the Respondent and its legal representatives and successor(s) in interest, if any;
- c) a statement briefly describing the nature and circumstances of the dispute and the defence to the claim, including counter-claims, if any, raised specifying the relief claimed, and the amounts of any quantified counter-claims and, to the extent possible, an estimate of value of any other counter-claims;
- d) any comment in response to any statements contained in the Request for Arbitration, or with respect to which the Respondent wishes to make a proposal, on matters relating to the conduct of the arbitration such as the number of arbitrator(s), the applicable rules of law, and the seat/place of arbitration;
- e) unless the parties have agreed otherwise:
  - i. where the arbitration agreement provides for a sole arbitrator, the concurrence or otherwise with the proposed nomination of the party making request for Arbitration;
  - ii. where the arbitration agreement provides for three or five member Tribunal, the nomination of Arbitrator shall be as envisaged in such agreement.
- f) confirmation that copies of the Response and the documents relied on have been or are being served simultaneously on all other parties, specifying the mode of service employed and the date of service, by documentary proof satisfactory to the Coordinator of actual delivery (including the date of delivery);
- g) confirmation that the requisite administrative charges have been paid.

4.2 The Response may also include the Statement of Defence and a Statement of Counter-claim, as referred to in Rule 17.1.

## **5. DISCOVERY AND INSPECTION OF DOCUMENTS–**

The parties are entitled to seek discovery and inspection of documents by making an application at the earliest to the Director and on such application being filed, the Director may call upon the other party to produce such document for inspection which shall be done within 15 (fifteen) days from the date of the receipt of such direction unless the party has a

good reason for non-production of the document. The time prescribed for filing of pleadings as provided herein above shall stand extended by the time taken for discovery and inspection.

## **6. AUTHORITY TO REPRESENT AND ASSIST THE PARTY–**

6.1 Each party shall advise, in writing, the other party and the Director of –

- a) the name and address of the person who will represent or assist him or her, and
- b) the capacity in which such person will act.

6.2 Once the Arbitral Tribunal has been established, the parties or their representatives shall communicate in writing directly with the Arbitral Tribunal, with a copy of the communication addressed to the Directorate, for information, wherever necessary.

## **7. DISCLOSURES–**

7.1 When a person is approached in connection with his possible appointment as an Arbitrator, he shall disclose in writing any circumstances –

- a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and;
- b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within the time stipulated under the Act.

**Explanation 1** – The grounds stated in the Fifth Schedule to the Act shall guide in determining whether such circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an Arbitrator.

**Explanation 2** – The disclosure shall be made by such person in the form specified in the Sixth Schedule to the Act.

7.2 An Arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in Rule 7.1 unless they have already been informed of them by him.



## **8. APPOINTMENT OF ARBITRATORS–**

- 8.1 The parties to a dispute are free to determine the number of Arbitrators, provided that such number shall not be an even number.
- 8.2 Failing the determination referred to in sub- rule (1) above, the reference shall be to a sole Arbitrator.
- 8.3 Where the agreement provides for the appointment of a sole Arbitrator, the parties shall appoint such Arbitrator from amongst the members on the Panel of Arbitrators, within thirty days of intimation of filing of the Request. Where the parties fail to agree upon the sole Arbitrator from the panel within the said period, the President, in consultation with the Board of Governors, shall appoint a sole Arbitrator.
- 8.4 Where the agreement provides for appointment of three Arbitrators, the Claimant and Respondent shall appoint one Arbitrator each, within
- 8.5 Where the agreement provides for the appointment of three Arbitrators, the Claimant and Respondent shall appoint an Arbitrator each, within thirty days and in the event of either of the parties failing to nominate an Arbitrator, the Chief Executive Officer, in consultation with the Board of Directors, shall appoint an Arbitrator from the Panel.
- 8.6 Where the agreement provides for appointment of three Arbitrators, and in the event of there being no unanimity amongst the two named Arbitrators, in respect of appointment of the third Arbitrator, the Chief Executive Officer, in consultation with the Board of Directors, shall appoint such third Arbitrator from the Panel.
- 8.7 The parties shall have the choice of Arbitrators, from the Panel. The appointment, however, is subject to the consent and availability of such Arbitrator. In no case shall an Arbitrator on the Panel be available if he is already acting as an Arbitrator, in six matters pending adjudication and which are referred under these Rules.

## **9. APPOINTMENT IN CASE OF MULTIPARTY ARBITRATION –**

- 9.1 Where disputes arise amongst more than two parties out of a defined legal relationship or out of a series of interconnected contracts (including “chain” or “string” contracts), the

parties may agree that the Arbitral Tribunal shall consist of three members, one to be nominated by each of the parties (supporting parties will be grouped together and treated as one party for the purpose of such nomination of the arbitrator) and the third arbitrator shall be appointed by the Chairperson and such third arbitrator shall Chair the Arbitral Tribunal.

9.2 If the parties to a dispute are required to be grouped in three groups, each such group will nominate one arbitrator each and the three members of the Arbitral Tribunal shall nominate one out of themselves to Chair the Arbitral Tribunal. If the members fail to so nominate, the Chairperson shall nominate anyone of them to Chair the Arbitral Tribunal within fifteen days of the constitution of the Arbitral Tribunal.

9.3 If the parties to a dispute are required to be grouped in four groups, each such group will nominate one arbitrator and the Chairperson will appoint an independent arbitrator from the panel who shall Chair the Arbitral Tribunal.

9.4 If the parties to a dispute are required to be grouped in five groups, each such group will nominate one arbitrator each and the five members of the Arbitral Tribunal shall nominate one out of themselves to Chair the Arbitral Tribunal. If the members fail to so nominate, the Chairperson shall nominate anyone of them to Chair the Arbitral Tribunal within fifteen days of the constitution of the Arbitral Tribunal.

9.5 All efforts shall be made to ensure that such grouping of parties shall not exceed five. In case the groups are more than five, the Chairperson shall adopt such procedure for the appointment of arbitrators as may be deemed appropriate, in view of the facts and circumstances of the case, but in no case shall the number of arbitrators comprising the Arbitral Tribunal exceed five.

## **10. CHALLENGE OF ARBITRATORS –**

10.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess any requisite qualification which the parties have previously agreed, or if the arbitrator becomes *de jure* or *de facto* unable to fulfil his functions or is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

10.2 A party may challenge the arbitrator nominated by him only for reasons of which he becomes aware after the appointment has been made.

10.3 Subject to Rule 8, a party who intends to challenge an arbitrator shall send a notice of challenge within 14 days after the receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstances mentioned in Rule 11.2 become known to that party.

10.4 The notice of challenge shall be submitted to Centre and simultaneously shall be sent to the other party, the Arbitrator(s) being challenged and the other members, if any, of the Tribunal. The notice of challenge shall be in writing and shall state the reasons for the challenge. The Centre may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has yet not been constituted, any appointed arbitrator) within a period of 10 days' from the date of such request.

10.5 The notice of challenge duly submitted as per Rule 10.1 shall be disposed of by the Chairperson/ Sub-committee within a period of 30 days from the date of receipt of notice in terms of the Rules.

Provided, however, the time for deciding the challenge can in no circumstance exceed a further period of 30 days.

10.6 If the Chairperson or the Sub-Committee appointed by the Chairperson sustains the challenge, a substitute arbitrator shall be appointed in accordance with the procedure referred to in Rule 11.2. The time limits provided in Rule 11 shall commence from the date of the Coordinator's notification to the parties of the decision by the Chairperson or the Sub-Committee appointed by the Chairperson.

10.7 The Chairperson/ Sub-Committee will have the discretion to impose such costs as may be deemed appropriate in the event that the challenge fails, which shall be recoverable from the party instituting the challenge.

10.8 The Centre shall forthwith communicate, at the earliest, to the parties whether the challenge has been sustained or overruled.

## **11. TERMINATION AND SUBSTITUTION –**

11.1 An arbitrator may be replaced on the grounds specified in Section 14 of the Act either on an application by the Party or otherwise if in the opinion of the Chairperson or the Sub-Committee appointed by the Chairperson is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

11.2 In the event of death, resignation, withdrawal or removal of an arbitrator during the course of arbitral proceedings a substitute arbitrator shall be appointed in accordance with the procedure applicable to the appointment of the arbitrator.

11.3 When, on the basis of information that has come to its attention, the Chairperson or the Sub-Committee appointed by the Chairperson considers applying Rule 11.1, it shall decide on the matter after the arbitrator concerned, the parties and any other members of the Tribunal have had an opportunity to comment in writing within a reasonable period of time. Such comments shall be communicated to the parties and to the Tribunal.

11.4 The further proceedings before the reconstituted Tribunal shall commence from the stage at which they were prior to such reconstitution.

## **12. FASTTRACK ARBITRATION –**

12.1 Notwithstanding anything contained hereinbefore, the parties may, mutually agree in writing, not later than one month of the constitution of the Tribunal, to adopt the fast track procedure for resolution of their disputes or differences.

12.2 In adopting the fast track procedure the parties shall sign an undertaking in writing to the effect that they shall dispense with oral evidence.

12.3 The Claimant shall submit supporting documents along with the Request, in terms of Rule 4 of these Rules, to the Secretariat, addressed to the Coordinator, and will supply a simultaneous copy to the other party.

12.4 The other party shall, within thirty days of the receipt of the documents referred to in Rule 12.3, submit its Reply, to the Secretariat addressed to the Coordinator, together with documents in support of the Reply.

12.5 The parties shall appoint a sole arbitrator from the Panel of Arbitrators in terms of Rule 9 of these Rules within a period of thirty days after the expiry of the date specified in Rule 12.4 and communicate the same to the Coordinator. If parties fail to reach an agreement, the Chairperson or the Sub-Committee appointed by the Chairperson shall make such appointment within one week after the expiry of said period of thirty days. The confirmation of the appointment of the Arbitrators after obtaining mandatory disclosure in terms of Sixth Schedule of the Act, as may be amended from time to time, shall be communicated to the parties and the Arbitrators.

### **13. FASTTRACK PROCEDURE –**

13.1 The Arbitral Tribunal shall follow the following procedure while conducting arbitration proceedings under the fast-track procedure:

- a) the Arbitral Tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties;
- b) the Arbitral Tribunal shall have the power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
- c) an oral hearing may be held only if all the parties make a request or if the Arbitral Tribunal considers it necessary to have an oral hearing for clarifying certain issues; if the Parties desire an oral hearing, such hearing would be limited to oral submissions within a specified time to be determined by the Arbitral Tribunal;
- d) the Arbitral Tribunal may adopt such procedure, not inconsistent with this Rule, as deemed appropriate for expeditious disposal of the case.

13.2 The award under this Rule shall be made within a period of 6 months from the date the parties have agreed to adopt the Fast Track Procedure.

13.3 If award is not made within 6 months, the mandate will terminate unless the extension has been granted by the Court.

13.4 The Arbitral Tribunal shall follow the procedure for resolution of dispute under this rule in consonance with the Act and principles of natural justice.

### **14. EMERGENCY ARBITRATION –**

14.1 If a party is in a requirement of urgent interim or conservatory measures that cannot await the formation of the Arbitration Tribunal, it may make an application to the Secretariat addressed to the Coordinator, with a simultaneous copy thereof to the other parties to the arbitration agreement for such measures.

14.2 The party making such an application shall:

- a) include a statement briefly describing the nature and circumstances of the relief sought and specific reasons why such relief is required on an emergency basis and the reasons why the party is entitled to such relief;
- b) pay the relevant application fee for the appointment of the Emergency Arbitrator, and
- c) file proof of service of such application upon the opposite parties.

14.4 The Secretariat, with the consent of the Chairperson or the Sub-Committee appointed by the Chairperson shall appoint the Emergency Arbitrator within two days of making of such request (excluding non-business days).

14.5 Prior to accepting his appointment, a prospective Emergency Arbitrator must disclose to the Coordinator any facts or circumstances which may give rise to justifiable doubts as to his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within one business day of the communication by the Coordinator to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

14.6 An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute unless agreed by all the parties.

14.7 The Emergency Arbitrator so appointed shall schedule a hearing including the filing of pleadings and documents by the parties within two business days of his appointment. The Emergency Arbitrator shall provide a reasonable opportunity of being heard to all the parties before granting any urgent, interim or conservatory measures and proceed to make an order by giving reasons. The parties shall comply with any order made by the Emergency Arbitrator.

14.8 The Emergency Arbitrator shall have the power to order an interim relief that he deems necessary in the best interest of justice. An order of the Emergency Arbitrator shall be

made in writing, with a brief statement of reasons. An order or award of an Emergency Arbitrator shall be enforceable in the manner as provided in the Act.

14.9 The Emergency Arbitrator shall ensure that the entire process from the appointment of the Emergency Arbitrator to making the order shall be completed within seven (7) days.

14.10 The Emergency Arbitrator shall become *functus officio* after the order is made and shall not be a part of the Arbitral Tribunal, which may be formed subsequently.

14.11 The order for urgent interim or conservatory measures passed by the Emergency Arbitrator shall not bind the Arbitral Tribunal on the merits of any issue or dispute that the said Tribunal may be required to determine.

14.12 The order passed by the Emergency Arbitrator shall remain operative for a period of two months from the date of passing of the order unless modified, substituted or vacated by the Arbitral Tribunal. The Arbitral Tribunal will also have the power to extend the order beyond the period of two months.

14.13 Any order of the Emergency Arbitrator may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative.

## **15. TERMS OF REFERENCE AND ARBITRATION SCHEDULE-**

15.1 On appointment of Arbitral Tribunal, the Directorate shall compile the documents and pleadings (i.e., Claims statement, reply and rejoinder, counter claim, reply to counter claim and rejoinder) and provisional Terms of Reference, if any, furnished by the parties, and submit it to the Arbitral Tribunal (one copy to each arbitrator, where there are more than one arbitrator) and within fifteen days from the date of the receipt of the same, the Arbitral Tribunal shall conduct a preliminary meeting with the parties and pass an procedural order fixing the timeline of Arbitration having due regard to Sec 29A of the 'Act'. The time- table shall specify:-

- a) the period within which the parties would file statement of Admissions and denials on allegations of fact as are made in the pleadings or in any documents.
- b) the period within which the parties would agree to dispense with formal proof of documents, except in case of questioned documents.

- c) the period within which (after recording the admissions and denials if any) the terms of reference or points for consideration have to be determined
- d) the period within which the parties would file statement of witnesses by way of affidavit which shall be treated as their depositions made in examination-in-chief.
- e) the dates when the Arbitral Tribunal shall record oral evidence to be adduced by the parties by way of cross-examination of the witnesses who have tendered their affidavit evidence (treated as their deposition in examination-in-chief deposition) and such other oral depositions as the Arbitral Tribunal may permit.
- f) the dates when the parties would address their arguments before the Arbitral Tribunal.

15.2 The time-table so fixed shall remain firm and binding on all concerned.

15.3 The Arbitral Tribunal shall communicate the time-table through the Director and also the time period for publication of the Award.

15.4 In the absence of any specific provision in these Rules, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings.

15.5 Failing any agreement between the parties about the procedure to be followed, the Arbitral Tribunal may conduct the proceedings in the manner it considers appropriate in the best interest of justice.

Provided, that if the parties to an arbitration agreement agree in writing to have their dispute resolved by fast track arbitration as specified in Sec 29B of the 'Act', the Arbitral Tribunal shall follow the procedure as laid down under these Rules for the purpose.

15.6 The power of the Arbitral Tribunal includes the power to determine the admissibility and relevancy of any evidence.

## **16. APPOINTMENT OF EXPERTS**

16.1 The Arbitral Tribunal may, unless otherwise agreed by the parties in writing:

- a) appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal, and



b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for inspection.

16.2 If party so requests or if the Arbitral Tribunal deems it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to examine the witness as regards his or her report.

16.3 The expert shall, on the request of a party, make available to that party, for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

16.4 The fees and costs of any expert appointed by a party shall be borne by the party appointing him. If the expert is appointed by the Arbitral Tribunal, the fees and costs of such appointment, unless otherwise directed by the Arbitral Tribunal, shall be shared equally by all the parties.

## **17. EVIDENCE** –

17.1 Ordinarily, the burden of proving the facts relied on to support its Claim, Counter-Claim or Defence, shall be on the concerned party.

17.2 The Tribunal shall, while determining the admissibility, relevance, materiality and weight of any evidence, not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 or by any strict rules of evidence.

17.3 Witnesses, including expert witnesses, who are presented by the parties to testify to the Tribunal on any issue of fact or expertise, may be an individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the Tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

17.4 At any time during the arbitral proceedings, the Tribunal may require the parties to produce documents, exhibits or other evidence within such period of time as the Tribunal shall determine. The Tribunal may also, in consultation with the parties, undertake a site visit.

17.5 In addition, the Tribunal shall have the power to:

- a) conduct such enquiries as may appear to be necessary or expedient;
- b) order the parties to make any property or item available for inspection; and
- c) order any party to produce to the Tribunal and to the other parties for inspection and to supply copies of, any document in their possession, custody or control which the Tribunal considers relevant to the case and material to its outcome.

## **18. HEARINGS** –

18.1 Unless the parties have agreed on a documents-only arbitration or as provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing on the merits of the dispute, including, without limitation, any issue as to jurisdiction.

18.2 The Tribunal may, in advance of any hearing, submit to the parties a list of questions which it wishes them to answer.

18.3 The Tribunal shall fix the date, time and place of any meeting or hearing and shall give the parties reasonable advance notice.

18.4 If any party to the proceedings, without sufficient cause, fails to appear at a hearing, the Tribunal may proceed with the arbitration and may make the Award.

18.5 Unless the parties agree otherwise, all meetings and hearings shall be held in private, and any recordings, transcripts, documents or other materials used shall remain confidential.

18.6 The Tribunal may at the request of the parties, make appropriate orders binding the parties on the terms of disclosure of documents considered to be sensitive, given the nature of the dispute.

## **19. WITNESSES** –

19.1 Before a hearing, the Tribunal may require any party to give a list of witnesses, including expert witnesses, whom it intends to produce, the subject matter of their testimony and its relevance to the issues.

19.2 The Tribunal has the discretion to allow, refuse or limit the number of witnesses intended to be produced by a party. The Tribunal shall also have the discretion to restrict the time to be allocated for the oral testimony of a witness.

19.3 The Tribunal is free to determine the manner in which witnesses are to be examined, and may direct that the testimony of any witness be presented in written form.

## **20. LAWS APPLICABLE TO THE SUBSTANCE OF THE DISPUTE–**

The Arbitral Tribunal shall decide the dispute in accordance with the rules of law designated by the parties, as applicable to the substance of the dispute, failing which the Arbitral Tribunal shall apply the law which it determines to be appropriate in the best interest of justice.

## **21. LAWS APPLICABLE TO THE ARBITRATION PROCEEDINGS–**

21.1 The Tribunal shall, for deciding the merits of the dispute, apply the law and/or rules agreed upon by the parties. Failing such agreement between the parties, the Tribunal shall decide the dispute on merits by applying the law with which the dispute has the closest connection.

21.2 The law governing the arbitration agreement shall be the Arbitration and Conciliation Act, 1996. The Rules governing the arbitration proceedings shall be the present Rules.

21.3 The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the Tribunal to do so.

21.4 In all cases, the Tribunal shall decide the dispute in accordance with the terms of the contract, if any, and shall take into account any trade usages applicable to the transaction, to the extent the Tribunal considers it to be relevant to the arbitration.

## **22. ORDERS OF THE TRIBUNAL –**

22.1 In addition to the powers specified in these Rules, and not in derogation of the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

- a) order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;
- b) issue an award for unpaid deposits towards the costs of the arbitration where a party to the arbitration has paid the non-paying party's share of the deposits on behalf of the non-paying party;
- c) direct any party -
  - i. to ensure that the assets of such party are not encumbered, alienated or dissipated in any manner so as to frustrate the Award;
  - ii. to provide security for legal or other costs in any manner the Tribunal thinks fit;
  - iii. to provide security for all or part of any amount in dispute in the arbitration.

### **23. ARBITRAL AWARD–**

23.1 At the request of any one of the parties and subject to the statutory timeline for completion of proceedings, the Tribunal may submit a draft award to the Coordinator for the scrutiny by the Committee constituted by the Secretariat for that purpose. In such event, the Coordinator will, on the advice of such Committee suggest modifications to the draft award without in any manner interfering with the decision of the Tribunal. The suggestions will be communicated not later than 10 days after the receipt of the draft award failing which the Arbitrator will proceed to pronounce the final award without waiting for the suggestions. The Tribunal is at liberty to make such changes as it deems fit to the draft award.

23.2 The Tribunal may make separate Awards on different issues at different times.

23.3 In the event of a settlement, if the parties so request, the Tribunal may render a consent award recording the settlement provided always that such Award contains an express statement that it is an Award made by the parties' consent. A consent award need not contain reasons. If the parties do not require a consent award, the parties shall confirm to the Coordinator that a settlement has been reached. The Tribunal shall be discharged and the arbitration concluded upon payment of any outstanding costs of the arbitration.

23.4 The Centre may publish any Award after redacting the names of the parties and other identifying information.

23.5 The Centre may advise or guide for the purpose of enforcement of arbitral award.

## PART – B

### **1. DEFINITION CLAUSE –**

1.1“**Conciliation**” shall mean mediation conducted as per the procedure for conciliation followed as provided under Arbitration and Conciliation Act, 1996. A settlement agreement in a conciliation proceeding is enforceable in law as an arbitration award under Section 74 of Arbitration and Conciliation Act, 1996;

1.2“**Mediation**” shall mean voluntary and confidential process of facilitated negotiation where a neutral third party known as the mediator assists parties to reach a mutually acceptable settlement to their dispute. The role of the mediator may be facilitative, evaluative and/or transformative. However, only the parties shall have the right to mutually decide the final terms on which the dispute is settled.

### **2. INTRODUCTION AND SCOPE OF APPLICATION–**

2.1 The Symbiosis Centre for Alternate Dispute Resolution (“SCADR”) sets out amicable dispute resolution rules, entitled the SCADR Rules (the "Rules"). These Rules shall be applicable to present or future disputes where parties have agreed in writing to refer their disputes to SCADR for Mediation/ Conciliation. The parties shall be deemed to have agreed that the proceedings shall be conducted and administered in accordance with these Rules;

2.2 Where any agreement, submission or reference provides for Mediation or Conciliation under the Rules, the parties shall be taken to have agreed that the Mediation or Conciliation shall be conducted in accordance with the following rules subject to modification by agreement of all of the parties that the parties may agree in writing at the time, provided that it shall be approved by SCADR.

2.3 These Rules shall also apply where Mediation/Conciliation is commenced on a referral by an arbitral tribunal.

2.4 Mediation/Conciliation under the Rules is a confidential, voluntary and private dispute resolution process in which a neutral person or persons [“The Mediator”/ “The Conciliator”] helps the parties to reach a negotiated settlement.

2.6 If any of these Rules are in conflict with any mandatory provision of the applicable law of Mediation/ Conciliation from which the parties cannot derogate, that provision shall prevail.

### **3. INITIATION OF MEDIATION/CONCILIATION PROCESS -**

3.1.If a dispute arises, a party may request the initiation of Mediation/Conciliation by delivering a written request for Mediation/Conciliation to the other party or parties with copies to SCADR. Such request for Mediation/Conciliation shall contain a brief self-explanatory statement of the nature of the dispute, the quantum in dispute (if any), the relief or remedy sought and nominating a mediator or mediators thought suitable.

3.2.A party who receives a request for Mediation/Conciliation shall notify the other party and SCADR within a reasonable time after receipt of the request whether they are willing for Mediation/Conciliation and whether any Mediator/Conciliator nominated is acceptable. Failure by any party to reply within a reasonable time shall be treated as a refusal to mediate.

3.3. A party to a dispute or all parties to the dispute may also request the initiation of mediation by submitting a Mediation/Conciliation Submission Form to SCADR.

3.4.On receipt of Mediation/Conciliation Submission Form by a party to a dispute, SCADR shall send an invitation to mediate/conciliate, nominating a Mediator or Mediators/ Conciliator or Conciliators, as the case may be and scheduling the date, time and venue of the 1<sup>st</sup> session of mediation. The party who receives the invitation for Mediation/Conciliation 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/Conciliator, so that SCADR can nominate another mediator or reschedule the 1<sup>st</sup> 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/conciliate.

#### **4. APPOINTMENT OF MEDIATOR/CONCILIATOR–**

- 4.1. Where the parties agree on Mediation/Conciliation and agree on a Mediator/Conciliator and the proposed Mediator/Conciliator is willing to serve, they will notify SCADR. The Mediation/Conciliation shall then proceed in accordance with these Rules.
- 4.2. If the parties fail to agree on the appointment of a Mediator/conciliator, SCADR will assist in appointing a single Mediator/Conciliator.
- 4.3. There shall be one Mediator/Conciliator, unless the parties agree that there shall be three Mediators/Conciliators. In case of three Mediators/Conciliators, each party shall appoint one Mediator/Conciliator and the parties may agree on a name of the third Mediator/Conciliator, who shall act as the Presiding Mediator/Conciliator. If the parties fail to agree on the third Mediator/Conciliator, SCADR shall assist in the appointment of the third Mediator/Conciliator.
- 4.4. Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole Mediator/Conciliator and failing unanimity in that behalf, SCADR shall appoint a sole Mediator/Conciliator.
- 4.5. The appointment of Mediator/Conciliator by SCADR under this Rule is deemed to be made on the agreement of parties as per Sec. 64 (2) of the Arbitration & Conciliation Act, 1996.
- 4.6. No person shall act as Mediator/Conciliator in any dispute in which that person has any financial or personal interest in the result of the Mediation/Conciliation except by consent of the parties. Before accepting an appointment, the proposed Mediator/Conciliator shall disclose to the parties and to SCADR any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. If any disclosure is made, SCADR shall immediately communicate the information to the parties for their comments.

#### **5. MEDIATION/CONCILIATION PROCESS–**

- 5.1. The parties may agree on the procedure to be followed by the Mediator/Conciliator in the conduct of the mediation proceedings.

5.2. Where the parties do not agree on any particular procedure to be followed by the Mediator/Conciliator, he shall follow the procedure hereinafter mentioned, namely:

- 5.2.1 He shall fix, in consultation with the parties, a time schedule, the dates and the time of each Mediation/Conciliation session, where all parties have to be present;
- 5.2.2 He shall hold the Mediation/Conciliation at SCADR Centre, or any convenient location agreeable to him and the parties, in consonance with SCADR;
- 5.2.3 He may conduct joint or separate meetings with the parties;
- 5.2.4 The parties or their lawyers shall, if so required, before the commencement of Mediation/Conciliation, provide to the Mediator/Conciliator and SCADR, a premeditation submission (Position Statement or Briefing Paper) setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;
- 5.2.5 Before the commencement of mediation, based on the request of the parties, SCADR shall convene a premeditation meeting between the parties to discuss the process and procedure of Mediation/Conciliation.
- 5.2.6 Each party shall furnish to the Mediator/Conciliator such other information as may be required by him in connection with the issues to be resolved.

5.3. Once the parties agree to proceed with Mediation/Conciliation, they shall sign an agreement to mediate/conciliate.

5.4. The Mediator/Conciliator shall use his best endeavours to conclude the Mediation/Conciliation within a reasonable time of his appointment.

5.5. The Mediator/Conciliator is not bound by the law of procedure or Evidence Act.

## **6. ROLE OF MEDIATOR/CONCILIATOR –**

6.1. The Mediator/Conciliator may conduct the Mediation/Conciliation in such manner, as he 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.



6.2.The Mediator/Conciliator shall be guided by the principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

6.3.The Mediator/Conciliator may obtain expert advice in technical matters with the consent of the parties, who shall bear the expenses incurred.

6.4.The Mediator/Conciliator shall disclose the substance of all information concerning the dispute which he receives from one party, to the other party and the other party shall be given opportunity to present explanations. Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the Mediator/Conciliator shall not disclose that information to the other party.

6.5.The Mediator/Conciliator 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 affect them; he shall not impose any terms of settlement on the parties.

6.6.After each session of mediation, the Mediator/Conciliator shall submit a Mediation/Conciliation Record Form, indicating the duration of the Mediation/Conciliation session and result of the session to SCADR. This shall be signed by the Mediator/Conciliator and the parties.

## **7. ROLE OF THE PARTIES –**

7.1.The Mediator/Conciliator may communicate with the parties together or with any party separately, including private meetings and each party shall co-operate with the Mediator/Conciliator. The parties shall give full assistance to enable the Mediation/Conciliation to proceed and be concluded within the time stipulated.

7.2.Each party may at its own initiative or at the invitation of the Mediator/Conciliator, give suggestions for settlement of the dispute.

7.3.The parties must understand that the Mediator/Conciliator 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/Conciliation will result in a settlement. The Mediator/Conciliator shall not impose any decision on the parties.

7.4. While no one can be compelled to commit to settle his case in advance of Mediation/Conciliation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes.

## **8. ROLE OF SCADR –**

8.1. SCADR will make the necessary arrangements for the Mediation/Conciliation, including-

- i. Assisting the appointment of the Mediator/Conciliator;
- ii. Organizing a venue and assigning a date for the Mediation/Conciliation;
- iii. Organizing an exchange of summaries of cases and documents; and
- iv. Providing general administrative support.

8.2. SCADR, together with the Mediator/Conciliator, will assist in drawing up the mediation agreement, if necessary.

## **9. REPRESENTATION –**

9.1. The parties may be represented or assisted by persons of their choice. Each party shall notify in advance the names and the role of such persons to SCADR and the other party. Each party shall have full authority to settle the matter before the Mediator/Conciliator. The parties will confer upon their representatives the necessary authority to settle the dispute.

9.2. If any of the parties are not able to be present personally, he/they can be represented through their counsel or power of attorney holders. But such counsel or power attorney holder shall have the power to enter into any settlement.

9.3. If any of the party is assisted by a legal counsel, the other party shall also be entitled to such assistance by a legal counsel.

9.4. The names, addresses, phone and fax numbers of all parties to the dispute, and those who will represent them, should be exchanged between the parties and also furnished to SCADR.

## **10. CONFIDENTIALITY–**

10.1. Mediation/Conciliation is a private and confidential process. Every document, communication or information disclosed, made or produced by any party for the purpose of or related to the mediation process shall be disclosed on a privileged and without prejudice basis and no privilege or confidentiality shall be waived by such disclosure. Confidentiality also extends to the settlement agreement except where its disclosure is necessary for implementation or enforcement.

10.2. Mediation/Conciliation proceedings are settlement negotiations, and all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any litigation or arbitration of the dispute. However, evidence that is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation session.

10.3. The Mediation/Conciliation will be conducted in confidence, and no transcript or formal record will be made. No audio-visual recording will be made of the proceedings. Only the Mediator/Conciliator, the parties and/or their representatives and advisers and SCADR staff as required will be permitted to be present during the mediation.

10.4. Nothing that transpires during the course of the Mediation/Conciliation is intended to or shall in any way affect the rights or prejudice the position of the parties to the dispute in any subsequent arbitration, adjudication or litigation.

10.5. Parties shall maintain confidentiality in respect of events that transpired during Mediation/Conciliation and shall not rely on or introduce the said information in any other proceedings as to:

- i. Views expressed by a party in the course of the Mediation/Conciliation proceedings;
- ii. Documents obtained during the Mediation/Conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or Mediators/Conciliators;

- iii. Proposals made or views expressed by the Mediator/Conciliator;
- iv. Admission made by a party in the course of Mediation/Conciliation proceedings;
- v. The fact that a party had or had not indicated willingness to accept a proposal.

## **11. SETTLEMENT –**

11.1. When the Mediator/Conciliator finds that there exist elements of settlement, he shall formulate the terms of a possible settlement and submit to the parties for their observations. After receiving their observations, the terms may be reformulated by the Mediator/Conciliator.

11.2. If the parties reach agreement on the settlement terms, the Mediator/Conciliator with the assistance of SCADR, may draw up a settlement agreement on the terms agreed by the parties and the parties may sign the settlement agreement. The Mediator/Conciliator shall authenticate the agreement and furnish a copy to each party.

11.3. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them. The settlement agreement shall have the same status as that of an arbitral award and can be executed and enforced as a decree of a court.

11.4. In the case of court-referred Mediation/Conciliation, where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsels have represented the parties, they shall attest the signature of their respective clients. The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending. Where no agreement is arrived at between the parties, before the prescribed time limit or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

## **12. TERMINATION–**

12.1. The Mediation/Conciliation process shall come to end:

- i. Upon the signing of a settlement agreement by the parties or;
- ii. Upon the written advice of the Mediator/Conciliator after consultation with the parties that in his opinion further attempts at mediation are no longer justified or;
- iii. Upon written notification by any party at any time to the Mediator/Conciliator and the other parties that the mediation is terminated.

12.2. On completion of Mediation/Conciliation, the Mediator/Conciliator shall submit a Completion Report to SCADR.

12.3. After receipt of Completion Report, SCADR shall issue a Mediation Status Report to the parties, if they so request, intimating the final status of the process.

### **13. COSTS –**

13.1. Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the Mediation/Conciliation or of any subsequent arbitral or judicial proceedings. Administrative costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs, including:

- i. The Mediator's/Conciliator's fees and expenses;
- ii. Expenses for any witness or expert advice or opinion requested by the Mediator/Conciliator with the consent of the parties; and
- iii. The SCADR administrative costs in support of the Mediation/Conciliation.

13.2. The administrative costs of mediation shall be fixed by SCADR in accordance with the SCADR Mediation/Conciliation Fee Schedule.

13.3. The sum designated in the SCADR Mediation/Conciliation Fee Schedule of Initial Deposits shall be deposited by each of the parties with SCADR before the Mediator/Conciliator enters upon the Mediation/Conciliation, as a contribution to the cost and proper expenses of the Mediation/Conciliation.

13.4. The Mediator/Conciliator or SCADR may, at any time during the mediation, require the parties to make further deposits to cover any additional anticipated fees and expenses and suspend the process until such deposit is made.

#### **14. MEDIATOR'S/CONCILIATOR'S ROLE IN SUBSEQUENT PROCEEDINGS-**

14.1.The parties undertake that the Mediator/Conciliator 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. No party shall be entitled to call the Mediator/Conciliator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

#### **15. EXCLUSION OF LIABILITY-**

15.1.The parties jointly and severally release, discharge and indemnify the Mediator/Conciliator and SCADR 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.

15.2.No Mediator/Conciliator 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/Conciliation proceeding