



PAM MEDIATION RULES

(2020 EDITION)

Published by **Pertubuhan Akitek Malaysia**

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PAM Mediation Rules

Preambles

Mediation is a flexible dispute resolution method by which a neutral third party attempts to facilitate the parties reach a voluntary settlement. The PAM Mediation Rules provides an effective, cordial and confidential channel of communication towards early resolution of conflicts and differences.

Rule 1 – Application of PAM Mediation Rules

Wherever parties have agreed to mediation under the auspices of the Pertubuhan Akitek Malaysia (PAM), they shall be deemed to have accepted and be bound by these Rules subject to such modifications as the parties may agree. Unless the parties agree otherwise, these Rules as in effect on the date of commencement of the mediation shall apply.

Rule 2 – Commencement of the Mediation

- (i) Any party to a Mediation agreement that wishes to commence a mediation shall submit a Request for Mediation of the Dispute (the Request) in writing to the President or Deputy President for the time being of PAM together with an administrative fee of RM 200.00. The party shall at the same time send a copy of the Request for Mediation of the Dispute to the other party.
- (ii) The Request shall contain or be accompanied by the names, addresses, telephones, telefax or other communication references of the parties to the dispute; the name and particulars of the person or persons who will represent that party for the mediation; a copy of the Mediation Agreement; and a brief statement of the nature of the dispute, including the amount in issue and any relief or remedy sought.

Rule 3 – Invitation to Mediation

Upon acceptance of the Request, the President or Deputy President for the time being of PAM shall within twenty one (21) days send a written invitation (the Invitation) to

each party to submit to mediation accordance with these Rules. The Invitation shall appoint a Mediator thought suitable and shall accompanied by a copy of the Request. A copy of the Invitation shall at the same time be sent to the party submitting the request.

Rule 4 – Appointment of Mediator

- (i) Any party who receives an Invitation from the President or Deputy President shall within fourteen (14) days notify PAM and each other party whether the appointed Mediator is acceptable. Where all the parties agree on the Mediator, and the proposed Mediator agrees to act, the mediation shall proceed in accordance with these Rules.
- (ii) The President or Deputy President for the time being of PAM shall have the right to appoint another Mediator either upon the request of either party or on his own motion in place of the appointed Mediator be unwilling or is unable to proceed with the mediation, or fails to proceed with reasonable speed or is for any reason disqualified from acting as Mediator.

Rule 5 – Circumstances of Appointment

The Mediator shall disclose to PAM and to the parties any circumstances which may compromise the independence, impartially or ability to act of the Mediator prior to accepting the appointment, or forthwith upon any such circumstances arising.

Rule 6 – Conduct of Mediation

- (i) The Mediator shall commence the mediation as soon as possible after his appointment and shall conclude the mediation proceedings within ninety (90) days from the date of his appointment. The parties may however agree to extend the time for the conclusion of the mediation.
- (ii) The parties shall in good faith provide full cooperation and assistance to the Mediator to enable the mediation to proceed expeditiously and be concluded within the stipulated time. In particular, the parties shall comply with the Mediator's requests to submit the written statements and documents and shall attend the mediation sessions.

- (iii) The parties may be represented by such person(s) as they consider appropriate, provided that such person(s) shall forthwith be made known to each other party and Mediator.
- (iv) The Mediator shall fix the date and time of each mediation session. The mediation shall be conducted at the PAM's premises or at such other venue determined by the Mediator.
- (v) The Mediator may invite each party to provide him with a brief written statement describing the general nature of the dispute and his position on the issues in the dispute together with the relevant supporting documents, if any. Each party shall send a copy of his written statement to the other party and to the Mediator at least three (3) days before any mediation meeting.
- (vi) The Mediator may invite each party to attend a mediation meeting(s), at which the parties shall each be given an opportunity to make a brief oral presentation of their positions. Prior to any mediation meeting, each party should identify to the Mediator and to each other party at least one representative having full authority to agree to settlement of the disputes.
- (vii) The Mediator shall impartially and independently conduct the mediation in such manner as he thinks fit with a view to expeditiously assisting the parties reach a mutually acceptable settlement, taking into account any wishes the parties may express. The Mediator shall have no authority to impose any settlement on the parties. For this purpose, the Mediator may caucus privately with any of the parties. Any party may request a private caucus with the Mediator at any time. He may also meet with the parties jointly. The Mediator may also express views on the issues in the dispute and make such settlement proposals as he thinks fit. Such settlement proposals need not be in writing.
- (viii) The Mediator may at any time request either party to submit such additional information as he deems appropriate. If necessary, the Mediator may request for and obtain legal or expert technical advice on the issues in dispute provided the parties agree to pay the costs of the same.
- (ix) The mediation sessions shall be conducted in private. Other than the parties and their representatives, no other person shall attend any mediation meeting without the agreement of every other party and the Mediator. There shall be no recording or transcript of any mediation meeting or sessions.

- (x) The Mediator may terminate the mediation proceedings at any time if in his opinion further efforts at mediation will not achieve a settlement of the dispute.
- (xi) If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a binding written Settlement Agreement, with the assistance of the Mediator as appropriate. The duly signed Settlement Agreement shall have full contractual force and effect and shall be legally binding upon the parties.

Rule 7 – Confidentiality of Mediation Proceedings

- (i) The parties, the Mediator, PAM and any officer or employee of PAM shall keep confidential all matters relating to the mediation, including the existence or terms of any Settlement Agreement except where disclosure is necessary for the propose of implementation and enforcement. All documents, records or other information received by the Mediator, PAM or any officer or employee of PAM shall be confidential.
- (ii) The parties shall not refer to, or introduce as evidence, in any arbitration or judicial proceedings, any communication relating to a possible settlement of the dispute; any comments made by any party in the course of the mediation; any comment or view expressed by the Mediator, or the fact that any party indicated any willingness, or otherwise, accept any proposal for settlement.

Rule 8 – Termination of Mediation

- (i) The mediation shall terminate:
 - (a) upon a written declaration of any or all of the parties that the mediation is terminated;
 - (b) upon execution of a Settlement Agreement in writing between the parties;
 - (c) upon a written declaration of the Mediator that in his opinion a settlement is unlikely to be achieved in the mediation; or
 - (d) within ninety (90) days of the appointment of the Mediator, or on such date or within such other period as may be agreed between the parties and the Mediator.

Rule 9 – Other Proceedings

- (i) The Mediator shall not act in any capacity with regard to the subject matter of the mediation, whether as an arbitrator, witness, consultant or representative of any party, in any judicial proceedings, or otherwise except as all of the parties may otherwise agree.
- (ii) No party shall call upon the Mediator or any officer or employee of PAM to give evidence in any such proceedings, except as all of the parties may agree.

Rule 10 – Resort to Arbitral or Judicial Proceedings

The parties shall not during the course of the mediation proceedings, commence any judicial or arbitral proceedings in respect of the dispute under the mediation except where such proceedings are necessary to preserve the party's rights.

Rule 11 – Role of PAM

PAM, in conjunction with the Mediator, may assist in arrangements for the mediation including, as necessary, organising a suitable venue and assisting in the exchange of written communication and documentation.

Rule 12 – Exclusion of Liability

- (i) Neither the Mediator nor PAM, or any other officer or employee of PAM, shall be liable for any act or omission arising out of or in relation to the mediation, in the absence of fraud or willful misconduct.
- (ii) The Mediator shall be an independent contractor and shall not be an agent or employee of PAM. The parties acknowledge that in acting as Mediator in any mediation held pursuant to these Rules, the Mediator is not representing or giving legal advice to, or assessing, upholding or protecting or attempting to assess, uphold or protect any rights of any of the parties.

Rule 13 – Expenses and Costs

- (i) All costs and expenses incurred in the mediation proceedings shall be borne equally by the parties (unless they otherwise agree) including the following costs:

- (a) the Mediator's fees travel expenses and any other out of pocket expenses including that of hiring of venue, refreshments, telephone and facsimile costs, postage, typing costs, etc regardless of whether any settlement is reached between the parties.
 - (b) The costs of any legal, expert or technical advice as requested by the Mediator for the purpose of the mediation.
 - (c) PAM imposes an administration and coordinating charge on the Mediator taxed at ten percent (10%) of the Mediator's fees only. This charge which is payable by the Mediator to PAM inclusive in the Mediator's fees.
- (ii) Each party shall bear its own costs and expenses in the preparation and conduct of the mediation, including the expenses of any advisor, witness or expert procured by any party, unless otherwise agreed between the parties

Rule 14 – Deposit Towards Mediation Expenses

Before the commencement of the mediation, the Mediator may require each party to deposit with PAM such amount covering the expenses of the mediation as he shall reasonably direct. Payment of security for mediation expenses should be made by cheque made payable to Pertubuhan Akitek Malaysia and crossed A/C Payee only. Upon termination of the mediation and by the direction of the Mediator, PAM shall return the unused balance remaining of the deposit to the parties in equal amounts.



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