

**BANGALORE INTERNATIONAL MEDIATION, ARBITRATION AND
CONCILIATION CENTRE**

NEUTRAL EVALUATION RULES

RULE 1: INTRODUCTION

1.01 These Rules shall be called as “**Bangalore International Mediation, Arbitration and Conciliation Centre’s Neutral Evaluation Rules**” and shall be hereinafter referred to as the ‘Rules’.

RULE 2: DEFINITIONS

“**ADR**” shall refer to Alternative Dispute Resolution and also to Appropriate Dispute Resolution, which are not litigation that are pursued in courts of law.

“**BIMACC**” means Bangalore International Mediation, Arbitration and Conciliation Centre under the supervision of its Executive Board.

“**Centre**” means the Bangalore International Mediation, Arbitration and Conciliation Centre.

“**Collaborative Settler**” is a Neutral Evaluator who has been assigned the duty to collaborate with one or more Neutral Evaluators representing each of the parties to a dispute that has been referred to the Centre, and work towards arriving at a mutually agreeable settlement, with the assistance of the respective Neutral Evaluator, in accordance with these Rules.

“Counsel” shall refer to persons with appropriate qualification in law and duly enrolled or admitted to a Bar Council or Association of any country, recognized under the law of such country, with license or permission to practice law. This term shall mean and include advocates, solicitors, barristers and attorneys at law.

“INE” shall mean and refer to Integrated Neutral Evaluation process, where parties seeking Neutral Evaluation shall have the option at the initial stage to request the Registry to inform the Neutral Evaluator to explore the possibility of a settlement through any ADR option.

“Neutral Evaluation” is a process by which one or more parties to a dispute may obtain an objective opinion on the merits of their case, from an independent and neutral third party, before or after initiating litigation or other formal legal procedures, and obtain advice on the probable outcome of any legal procedures.

“Neutral Evaluator” is an independent person who conducts Neutral Evaluation under these Rules.

“SNE” shall mean and refer to Simple Neutral Evaluation process, where parties seeking Neutral Evaluation have not opted, at the initial stage, to request the Registry to inform the Neutral Evaluators to explore the possibility of a settlement through any other ADR option.

RULE 3: EFFECT OF THESE RULES

- 3.01 Bangalore International Mediation, Arbitration and Conciliation Centre's (BIMACC) Neutral Evaluation Services are currently governed by these Rules.
- 3.02 These Rules may be amended by the Centre from time to time without prior notice.
- 3.03 The Rules in force at the time the parties seek Neutral Evaluation from the Centre shall govern the concerned Neutral Evaluation case.

RULE 4: SIMPLE NEUTRAL EVALUATION (SNE)

- 4.01 Any party to a dispute, whether or not pending before any court, may, either directly or through a counsel, seek Neutral Evaluation with respect to (a) any specific disputes or (b) all issues in any pending case or (c) any or some specific issues in a pending case.
- 4.02 Parties may choose to have a common Neutral Evaluator or each of them may choose to have different Neutral Evaluators. Such request should be made in writing to the Registrar of BIMACC at the time of initially seeking SNE.
- 4.03 A Neutral Evaluator shall not advise or represent any of the parties to the dispute during the pendency of such a dispute in a court, arbitration proceeding or any other ADR options other than Integrated Neutral Evaluation as a collaborative

settler and for a further period of three years, either from the date of reference for evaluation or from the date of finality of resolution of dispute, either in court or before any other forum, whichever is later.

4.04 When a party seeks appointment of a Neutral Evaluator he may specifically mention the names of the persons who, in his opinion, are advising either such a party or other parties to the dispute, so that the registry may not appoint such a person as Neutral Evaluator.

4.05 It is the duty of a Neutral Evaluator, who has advised any other party on the same matter of dispute, under a SNE, to return the matter to the Registry, without rendering any opinion.

4.06 Parties seeking SNE may opt for evaluation from any domain experts, such as engineers, medical practitioners, scientists, technologists, etc., on the panel of the Centre. In the event of non availability of a Neutral Evaluator with special domain expertise, the party may identify such persons/ entities and the Centre may request such person/ entities, to indicate their willingness to be empanelled and render opinion on the questions involved.

4.07 The parties as well as their counsels can seek an audience with the Neutral Evaluator at the time of rendering the opinion or advice, subject to payment of such fee as may be mutually agreed between the concerned Neutral Evaluator and the respective party.

4.08 On receipt of a requisition for SNE the Registry may collect a nominal administrative fee, as may be prescribed from time to time, and determine an appropriate Neutral Evaluator, as the case may be.

4.09 The Registry shall endeavor to process the request immediately by contacting appropriate Neutral Evaluators.

4.10 The Registry shall endeavor to appoint a Neutral Evaluator within two (2) weeks from the date of request subject to acceptance and payment of fees as per **RULE 6** of these Rules.

RULE 5: INTEGRATED NEUTRAL EVALUATION (INE)

5.01 Integrated Neutral Evaluation process is when parties seeking Neutral Evaluation shall have the option at the initial stage to request the Registry to inform the Neutral Evaluator to explore the possibility of a settlement through any other ADR option.

5.02 If a common Neutral Evaluator has been appointed by the parties, he shall not function as an arbitrator or mediator; however, he can function as a Collaborative Settler.

- 5.03 If each of the parties has appointed a Neutral Evaluator, each of the parties shall request the Registry to appoint such Neutral Evaluators as Collaborative Settlers, when required.
- 5.04 Parties to a Neutral Evaluation may, by way of a separate application, request the Registry for adopting any of the ADR options such as Arbitration/ Mediation/ Conciliation, as the case may be, for the dispute referred for Neutral Evaluation.
- 5.05 Appropriate rules of Mediation, Arbitration and Conciliation would apply to the disputes referred by the Neutral Evaluators for Mediation, Arbitration or Conciliation, as the case may be, under the respective applicable fees. Parties are requested to refer the respective rules available in the website of the Centre.
- 5.06 Rules for appointment of Neutral Evaluators for SNE shall apply to appointment of Neutral Evaluators for INE.

RULE 6: REGISTRATION AND ADMINISTRATION FEE

- 6.01 Any party to a dispute or negotiation may request for Neutral Evaluation by sending an application for Neutral Evaluation in the prescribed form to the Centre by paying a nominal Administrative Fee, as prescribed from time to time by the Registry and published in the Schedule of Fees.
- 6.02 Further, the Registrar may levy such processing fee in addition to the Administration Fee.

6.03 The Centre's administrative fee and processing fee are non-refundable.

RULE 7: NEUTRAL EVALUATOR'S FEES

7.01 The Registry may obtain an approximate range of fee from the concerned Neutral Evaluator (minimum and maximum fee) and indicate the same to the party concerned. The party may indicate the maximum fees that he can afford and the registry may suitably refer the matter to an appropriate Neutral Evaluator.

7.02 Considering the fact that the Neutral Evaluator shall be disabled from advising any of the parties in the future for a period of three years, each of the Neutral Evaluators may charge an appropriate fee that he may think fit.

7.03 If, in the opinion of any of the parties, the fee is beyond their budget, they have the liberty to seek an alternative Neutral Evaluator or withdraw the request for Neutral Evaluation by giving a letter to the Registrar in writing. On withdrawal, the nominal administration fee shall not be refunded.

7.04 If parties agree to the fee structure, they shall sign the consent terms and deposit the Neutral Evaluator's fee to the credit of the Neutral Evaluator in such designated account and provide proof of the same.

7.05 On remittance of the fee to the Neutral Evaluator and receipt of the processing fee, the Registry shall forward the papers to the Neutral Evaluator.

7.06 Fee for collaborative Settlement shall be determined by the respective Collaborative Settler, on case to case basis and the concerned parties.

RULE 8: TAX ON FEE

8.01 In addition to the Fees, the Parties are liable to pay such Service Tax or Value Added Tax based on the country of residence of such Neutral Evaluator/ Collaborative Settler.

8.02 Wherever parties are required to withhold taxes towards fee payable to the Neutrals or Collaborative Settlers, such parties should inform the concerned Neutral Evaluator as well as the Centre.

8.03 Parties are duty-bound to clarify their duty to withhold tax with necessary certificate from a practicing Chartered Accountant, CPA or endorsement from appropriate regulator of that regime.

8.04 Parties withholding taxes are duty bound to furnish such documents as may be required in law to the neutral/ collaborative settler or the Centre to reclaim or set off such tax as may be deducted.

RULE 9: NON PAYMENT OF FEE

9.01 The Centre shall forward duly authenticated copies of the Neutral Evaluation Report or the Settlement to the concerned parties only after all fees due to the

concerned Neutral Evaluator or Collaborative Settler have been remitted in full to the concerned Neutral Evaluator or Collaborative Settler, as the case may be.

9.02 Any dispute concerning the fees shall be resolved by a three member committee set up by the Centre, subject to payment of fees as may be determined by such committee from time to time. Such committee may, at its option, resolve the dispute either online or by holding telephonic or video conference, without requiring the presence of the parties. The ruling of the said committee of the Centre shall be final and binding on all the parties.

9.03 The Centre shall not be liable to any Neutral Evaluators or collaborative Settler for outstanding fees from parties, nor shall it be liable when any party seeks refund of any fees paid in advance to any neutral evaluator.

9.04 By applying for NE and or CS, it shall be deemed that each of the parties and Neutral Evaluators shall indemnify the Centre, its governing body, advisors and members from any claim, damages etc arising from any dispute concerning any matter referred to the Centre at any point of time and keep the Centre indemnified at all times.

RULE 10: PARTIES

10.01 In Neutral Evaluation, subject to the approval of the Neutral Evaluator, the Parties may participate in person or depute authorized representatives on their behalf. The parties may also be assisted by legal advisers if the parties so desire.

10.02 The parties shall be deemed to have accepted and agreed to be bound by the terms of these Rules, once they make a reference to the Centre.

RULE 11: THE NEUTRAL EVALUATOR

11.01 If any of the parties has any valid reason to object to an appointment, the objection shall be made in writing to the Centre. The Centre will then appoint another Neutral Evaluator within two (2) weeks from the date of the receipt of the objection.

11.02 A Neutral Evaluator shall disclose promptly to the Centre, any circumstances which may give rise to conflict of interest, lack of independence, deviation from impartiality or any circumstances or things that prevent him from discharging his duties as a Neutral Evaluator. This duty of disclosure is a continuing duty and should circumstances which may give rise to justifiable doubts as to his independence or impartiality arise during the course of the Neutral Evaluation, the Neutral Evaluator shall advise the Centre immediately.

11.03 **REMOVAL OF NEUTRAL EVALUATOR** – If any of the parties brings to the notice of the Registrar with sufficient proof that a Neutral Evaluator has committed a breach or failed to function in a neutral manner, he may be removed from the relevant case. In such cases, the Centre may, in consultation with the

concerned Neutral Evaluator, direct the concerned Neutral Evaluator to refund the entire fee to the concerned party.

11.04 Upon receipt of any such disclosure by any of the parties or removal of the Neutral Evaluator, the Centre shall appoint another person as the Neutral Evaluator within two (2) weeks of receipt of such disclosure by the parties. In an event under Rule 11.03, no additional administrative fee will be charged by the Centre.

11.05 The Neutral Evaluator shall:

- (a) Prepare himself appropriately before the commencement of the Neutral Evaluation; and
- (b) Abide by the terms of the Neutral Evaluator's Code of Conduct.

11.06 If the Neutral Evaluator is unable to continue in his appointment, the Centre shall appoint a substitute Neutral Evaluator within two (2) weeks from the date the Centre receives the Neutral Evaluator's notice of his inability to continue in the Neutral Evaluation.

11.07 If a Neutral Evaluator resigns or is replaced, the proceedings shall resume at the stage where the said Neutral Evaluator had ceased to perform his functions, unless the replacement Neutral Evaluator decides that any part of the prior proceedings are to be repeated, subject to the approval of the party or parties.

11.08 The Centre is not liable for any acts of omission or commission of any Neutral Evaluator. The Neutral Evaluator is neither an employee nor an agent of the

Centre. A service engagement between the parties and Neutral Evaluator is deemed as one which is based on principal to principal.

RULE 12: DEPOSIT FEE

12.01 Upon receiving the matter for NE the Centre may collect a deposit from the parties as reasonable security for estimated costs and expenses (Deposit Fee).

12.02 Parties shall pay the Deposit Fee in equal shares.

12.03 If the Parties agree not to proceed with the Neutral Evaluation at any stage after an accepted request, the security deposit shall be refunded to the parties after deduction of the proportionate fees and expenses incurred by the Neutral Evaluator till the date of receipt of information of termination by the Neutral Evaluation or Collaborative Settlement.

RULE 13: PROCESS OF NEUTRAL EVALUATION

13.01 Parties shall furnish to the Centre their respective statements for evaluation which shall contain:

- (a) the nature and basis of the dispute;
- (b) the facts and legal issues involved in the dispute;
- (c) the respective party's contentions as to those issues; and
- (d) the issues that the party/ parties desire to be evaluated.

RULE 14: THE OPINION

14.01 The Neutral Evaluator shall serve his opinion on the Centre within two (2) weeks from the date of the last Evaluation Session(s).

14.02 The Neutral Evaluator shall provide an Opinion which is reasoned and in writing.

14.03 The Neutral Evaluator's opinion shall be based on the submissions and materials presented to the Neutral by parties. The Neutral Evaluator shall not carry out any independent investigation, due diligence or verification of information placed before him/her without the consent of the concerned party or parties as the case may be.

14.04 The Neutral shall forward a duly signed opinion (Hard Copy as well as in PDF format by e.mail) to the Centre to be authenticated and he shall not forward the same to the parties directly.

14.05 On receipt of the opinion from the Neutral Evaluator, the Centre shall verify and confirm whether the same is in order and a signed copy from the Neutral Evaluator shall be forwarded to the concerned parties.

RULE 15: RIGHT TO PARTICIPATE AND CONFIDENTIALITY

15.01 This Neutral Evaluation process is entirely private and confidential. All parties involved shall keep the matter fully confidential.

15.02 Any person attending the hearing may do so only by way of written consent of the parties and the Neutral Evaluator.

15.03 The Neutral Evaluation shall be conducted in confidence. In particular, if a meeting is convened:

(a) No transcript, audio or video recording or other formal record, shall be made at any stage of the Neutral Evaluation.

(b) Only the Neutral Evaluator, the parties and/ or their representatives and/ or legal advisers shall be permitted to participate during the Neutral Evaluation.

15.04 Unless the parties agree otherwise, all communications expressed and disclosed in the course of the Neutral Evaluation, including all materials prepared and/ or rendered and/ or exchanged for purposes of the Neutral Evaluation shall be kept confidential, treated as 'without prejudice' and shall not be offered as evidence in any other proceedings.

RULE 16: WAIVER OF LIABILITY AND DISCLAIMER

16.01 The parties shall not make any claim whatsoever against the Neutral Evaluator and/ or the Centre and/ or the Centre's officers or employees for any matter in connection with or in relation to:

(a) the Neutral Evaluation; and/ or

(b) the services provided by the Neutral Evaluator and/ or the Centre; and/ or

(c) the dispute between the parties.

16.02 The Neutral Evaluator shall not be liable to the parties for any act or omission whatsoever in connection with the services provided by him or in relation to the Neutral Evaluation.

16.03 The Centre shall not be liable to the parties for any act or omission whatsoever in connection with the services provided by the Neutral Evaluator and/ or the Centre or in relation to the Neutral Evaluation.

16.04 All comments made and opinions expressed by the Neutral Evaluator, whether oral or in writing, are stated:

(a) In the context of the dispute between the parties; and

(b) For the limited purpose of assisting the parties in resolving their dispute.

(c) Only on the basis of the documents provided and material furnished and where copies of the original are furnished, presuming they are the true copies of the original.

16.05 No Neutral shall be cited as a witness in any proceedings arising out of or in connection to the Neutral Evaluation at any point of time.

16.06 The parties shall also not call the Centre or any of its officers or employees as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

RULE 17: INTERPRETATION

17.01 In these Rules, any reference to the masculine includes the feminine.

17.02 The interpretation that is given by the Centre to any provision in this Neutral Evaluation procedure shall be the correct interpretation of the provision concerned.

17.03 Any word or phrase not defined in these rules shall have the same meaning as provided in the Centre's Mediation and Conciliation Rules.

