

# Commercial Mediation Rules 2020



**JCAA**



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# Commercial Mediation Rules

As Effective on February 1, 2020

## CHAPTER I General Provisions

### Article 1 Purpose

These Commercial Mediation Rules (the “**Rules**”) set out the procedures and other necessary matters relating to mediation administered by the JCAA to resolve commercial disputes.

### Article 2 Definitions

- 1 The term “**JCAA**” means the Japan Commercial Arbitration Association.
- 2 The term “**Party**” or “**Parties**” means one or more applicants and respondents.
- 3 The term “**Mediator**” includes more than one mediator.
- 4 The term “**in writing**” includes hard copy and electronic documents. Electronic documents include electronic, magnetic and any other recording media used in information processing by a computer or other electronic device.
- 5 The term “**Mediation Agreement**” means an agreement of the Parties to mediation administered by the JCAA.
- 6 The term “**List of Candidates for Mediators**” means the list prepared by the JCAA specifically for each mediation by reference to the JCAA’s database of candidates of mediators or any other resources.
- 7 The term “**Mediation Commencement Date**” means either the date:
  - (1) the JCAA notifies the parties of the request for mediation under Article 12.5, where there is a prior Mediation Agreement; or
  - (2) the JCAA notifies the Parties under Article 13.5 that the JCAA acknowledges receipt of the respondent’s written acceptance of the proposal to mediate under Article 13.1, in the absence of a prior Mediation Agreement.

### **Article 3 Derogation from the Rules**

Where the Rules apply, the Rules govern the mediation proceedings and the relationships between the Parties, the mediators and the JCAA. However, the Parties may agree to vary any of the Rules, except for Chapter V of the Rules.

### **Article 4 Interpretation of the Rules**

- 1 The authentic texts of the Rules are Japanese and English. In the event of any difference or inconsistency between these two versions, the Japanese version shall prevail.
- 2 In the event of any difference as to the interpretation of the Rules, the interpretation by the JCAA shall prevail.

### **Article 5 Manner of Communication**

Any notice, submission or transmission under the Rules shall be sent by courier, registered mail, e-mail, or any other reasonable means, unless otherwise agreed by the Parties.

### **Article 6 Administrative Body and Secretariat**

The JCAA shall administer the mediation proceedings under the Rules.

### **Article 7 Communication Language with the JCAA**

Communications between the JCAA and the Parties, or between the JCAA and the Mediator, shall be in either English or Japanese.

### **Article 8 List of Candidates for Mediators**

If requested, the JCAA shall provide a List of Candidates for Mediators to a Party to assist that Party to appoint a mediator. The Parties may appoint a person who is not on the List of Candidates for Mediator as a Mediator.

### **Article 9 Representation and Assistance**

A Party may be represented or assisted by any person of

its choice in mediation proceedings under the Rules.

### **Article 10 Change or Fix of Time Period**

If requested by the Parties or the Mediator, or the JCAA considers it necessary, the JCAA may fix or change any time period concerning the mediation proceedings under the Rules.

### **Article 11 Exclusion of Liability**

Neither the Mediator nor the JCAA (including its directors, officers, employees and other staff) shall be liable for any act or omission in connection with the mediation proceedings unless such act or omission constitutes willful misconduct or gross negligence.

## **CHAPTER II Commencement of Mediation**

### **Article 12 Commencement of Mediation when Prior Mediation Agreement Exists**

- 1 To commence mediation under a prior Mediation Agreement, the applicant shall submit a request for mediation (the "**Request for Mediation**") in writing to the JCAA, together with a copy of the Mediation Agreement.
- 2 The Request for Mediation under Article 12.1 shall set forth the following:
  - (1) the Parties' full names (if a Party is a legal entity or other association, the corporate name and the name of the Party's representative), street address and other contact details (including telephone number and e-mail address);
  - (2) the full name, street address and other contact details (including telephone number and the e-mail address) of applicant's counsel, if the applicant is represented by counsel;
  - (3) a summary of the dispute (including the claim(s) if it is identifiable); and
  - (4) any agreement between the Parties or any applicant's proposal as to the following:
    - (a) the Mediator's name or the procedures for appointment of the Mediator (including the number of the Mediators);
    - (b) the process for conducting the mediation

proceedings (including whether the Mediator shall suggest to all the Parties its proposals for settlement);

- (c) the time limit for concluding the mediation;
- (d) the language(s) of the mediation; and
- (e) the calculation method for the Mediator's remuneration.

- 3 If the applicant is represented by counsel, a power of attorney shall be submitted to the JCAA with the Request for Mediation.
- 4 When the applicant submits a Request for Mediation, it shall pay the JCAA the filing fee. If the applicant fails to pay such filing fee in full within the time limit fixed by the JCAA, the JCAA shall deem that no Request for Mediation has been submitted.
- 5 After the JCAA has confirmed that the Request for Mediation has been submitted in accordance with Articles 12.2 to 12.4, the JCAA shall promptly notify the Parties thereof. A copy of the Request for Mediation shall be attached to such notice to the respondent, unless it is filed jointly by all the Parties.

### **Article 13 Commencement of Mediation when No Prior Mediation Agreement Exists**

- 1 Where there is no prior Mediation Agreement, the applicant may still submit a Request for Mediation in writing to the JCAA, which sets forth the following:
  - (1) The proposal to the respondent that the disputes be referred to mediation under the Rules; and
  - (2) the matters provided for in Article 12.2.
- 2 If the applicant is represented by counsel, a power of attorney shall be submitted to the JCAA with the Request for Mediation.
- 3 When the applicant submits a Request for Mediation, it shall pay the JCAA the filing fee. If the applicant fails to pay such filing fee in full within the time limit fixed by the JCAA, the JCAA shall deem that no Request for Mediation has been submitted.
- 4 After the JCAA has confirmed that the Request for Mediation has been submitted in accordance with Articles 13.1 to 13.3, the JCAA shall promptly notify the Parties thereof and ask the respondent whether it accepts the proposal to mediate under Article 13.1. A copy of the Request for Mediation shall be attached to such notice to the respondent.
- 5 If the JCAA receives the respondent's written accep-



tance of the proposal to mediate under Article 13.1 (1), the JCAA shall promptly acknowledge its receipt and transmit such written acceptance to the applicant. The Mediation Agreement is deemed to have been reached between the Parties on the date when the JCAA receives such written acceptance.

- 6 If the JCAA does not acknowledge receipt of the respondent's written acceptance of the proposal to mediate under Article 13.1 (1) within two weeks from the respondent's receipt of the notice of the Request for Mediation under Article 13.4, the JCAA shall promptly notify the applicant that the mediation proceedings shall not commence.

### **Article 14 Reply**

- 1 Within two weeks from the Mediation Commencement Date, the respondent shall submit in writing to the JCAA a reply responding to the Request for Mediation (the "**Reply**").
- 2 If the respondent is represented by counsel, a power of attorney shall be submitted to the JCAA with the Reply.
- 3 On receipt of the Reply, the JCAA shall promptly transmit a copy thereof to the applicant.

## **CHAPTER III Mediator**

### **Article 15 Impartiality and Independence of Mediator**

- 1 A person who is not impartial and independent shall decline to accept an appointment as the Mediator. The Mediator shall be, and remain at all times, impartial and independent during the mediation proceedings.
- 2 When a person is approached in connection with his or her possible appointment as the Mediator, he or she shall conduct a reasonable investigation into any circumstances which may, in the eyes of the Parties, give rise to justifiable doubts as to his or her impartiality or independence. If he or she finds such circumstances, he or she shall either decline to accept the appointment or may disclose such circumstances in writing to enable the approaching person to decide whether or not to withdraw its request for appointment.

- 3 When a person is appointed as the Mediator, he or she shall promptly submit in writing to the JCAA his or her undertaking to disclose any circumstances which may give rise to justifiable doubts as to his or her impartiality or independence, or to declare that there are no such circumstances (the "**Declaration of Impartiality and Independence**"). The Declaration of Impartiality and Independence may be submitted either through the Party which has appointed him or her, or directly to the JCAA.
- 4 During the course of the mediation proceedings, the Mediator shall have an ongoing duty to make reasonable investigation into any circumstances which may, in the eyes of the Parties, give rise to justifiable doubts as to the mediator's impartiality or independence. If the Mediator finds such circumstances, the Mediator shall promptly disclose to the Parties and the JCAA in writing such circumstances, unless the Mediator has already disclosed such circumstances. An advance declaration in relation to such circumstances that may possibly arise in the future does not discharge the Mediator's ongoing duty of disclosure.

## **Article 16 Appointment and Confirmation of Mediator**

- 1 The Mediator shall be appointed pursuant to the agreement of the Parties.
- 2 If the Parties have not executed any agreement provided for in Article 16.1, the Mediator shall be appointed under Article 17.
- 3 Where a Party or Parties appoint the Mediator, or the Mediator already appointed by a Party or the Parties (the "**Party-Appointed Mediators**") appoints another Mediator, the appointment of such Mediator shall be effective only after confirmation by the JCAA.
- 4 On appointment of the Mediator by a Party, the Parties or the Party-Appointed Mediators, such Party, Parties and Party-Appointed Mediators shall promptly submit in writing to the JCAA for its confirmation under Article 16.3:
  - (1) a notice of appointment of the Mediator setting forth the appointed Mediator's name, street address and other contact details (i.e., telephone number and e-mail address) and occupation;
  - (2) a document setting forth the Mediator's acceptance of appointment; and

(3) Declaration of Impartiality and Independence.

- 5 The JCAA shall promptly transmit a copy of the documents under Article 16.4 to the Party (or Parties) and the Mediator other than those who submitted those documents.
- 6 When confirming or appointing the Mediator, the JCAA shall consider the prospective Mediator's background, nationality, place of residence, language skill, expertise, experience as mediator, availability, any circumstances disclosed by the Mediator under Article 15.2 or 15.3 and any other relevant factors.
- 7 The JCAA shall refuse to confirm the appointment of the Mediator if the JCAA finds that the appointment is clearly inappropriate, including but not limited to similar circumstances to those provided for in Article 23(1) of Code of Civil Procedure of Japan<sup>1</sup>. Prior to such refusal, if the JCAA considers it appropriate, the JCAA may provide a Party, the Parties or the Party-Appointed Mediator that have appointed the Mediator with an opportunity to state their opinions.
- 8 Upon confirming the appointment of the Mediator, the JCAA shall promptly notify such confirmation to the Parties and the Mediator.
- 9 If the appointment of the Mediator is not confirmed by the JCAA, the JCAA shall promptly notify thereof to the Party, the Parties or the Party-Appointed Mediators who have appointed the Mediator. Such Party, Parties, or the Party-Appointed Mediators shall, within two weeks from their receipt of such notice, notify the

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<sup>1</sup> Article 23 (1) In the following cases, a judge is disqualified from performing the duties of a judge; provided, however, that in the case set forth in item (vi), this does not preclude a judge from performing duties as a commissioned judge based on a commission from another court:

- (i) if the judge, or the judge's spouse or former spouse, is a party to the case, or is related to a party to the case as a joint obligee, joint obligor, or obligor for redemption;
- (ii) if the judge is or was formerly the relative of a party to the case within the fourth degree of consanguinity or the third degree of affinity, or is or was formerly the cohabiting relative of a party to the case;
- (iii) if the judge is the guardian, supervisor of the guardian, curator, supervisor of the curator, assistant, or supervisor of the assistant of a party to the case;
- (iv) if the judge becomes a witness or expert in the case;
- (v) if a judge is or was formerly a party's representative or assistant in court in the case;
- (vi) if the judge participated in granting an arbitral award in the case or participated in reaching the judicial decision in the prior instance against which an appeal has been entered.

JCAA of the appointment of another Mediator by submitting the documents provided for in Article 16.4.

- 10 If the Party, the Parties, or the Party-Appointed Mediator fail to notify the JCAA of the appointment of another Mediator within the time limit fixed under Article 16.9, the JCAA shall appoint such Mediator under Articles 17.5 and 17.6.

## **Article 17 Procedures for Appointment of Mediator**

- 1 If the Parties fail to notify the JCAA of their agreement on the number of Mediators within two weeks from the Mediation Commencement Date, such number shall be one, and the Parties shall jointly appoint a single mediator.
- 2 Where the Parties agree that the number of the Mediators shall be two but fail to agree on the procedures for appointment of the two Mediators, the Parties shall appoint the two Mediators under the following procedures:
  - (1) where the number of the Parties is two, each Party shall appoint one Mediator; or
  - (2) where the number of the Parties is three or more, the applicant(s) and the respondent(s) respectively shall appoint one Mediator. However, if the JCAA considers it appropriate, the JCAA may establish different procedures for appointment of the Mediator after giving the Parties an opportunity to comment.
- 3 Where the Parties agree that the number of the Mediator shall be three but fail to agree on the procedures of appointment of the three Mediators, the Parties shall appoint the three Mediators under the following procedures:
  - (1) where the number of the Parties is two, each Party shall appoint one Mediator and the two Party-Appointed Mediators shall agree to appoint the third Mediator; or
  - (2) where the number of the Parties is three or more, the applicant(s) and the respondent(s) respectively shall appoint one Mediator and the two Party-Appointed Mediators shall agree to appoint the third Mediator. However, if the JCAA considers it appropriate, the JCAA may establish different procedures for appointment of the Mediator after giving the Parties an opportunity to comment.

- 4 Where the Parties or the Party-Appointed Mediators appoint the Mediator under Articles 17.1 through 17.3, and the Parties fail to notify the JCAA of the appointment of any Mediator by submitting the documents provided for in Article 16.4 within four weeks from the Mediation Commencement Date, the JCAA shall appoint such Mediator.
- 5 Where the JCAA appoints the Mediator under Article 17.4, the JCAA shall send the Parties the List of Candidates for Mediators. Within one week from receipt of this List, each Party shall respectively delete the name of any candidates to whom the Party objects, number the remaining candidates in order of preference, and notify in writing the JCAA thereof.
- 6 Once the JCAA receives the notice from the Parties under Article 17.5 or after the time limit under Article 17.5 expires if the JCAA does not receive the notice from any Party within such time limit, the JCAA shall promptly appoint the Mediator taking into account the order of preference expressed by the Parties and any other relevant circumstances, and notify the Parties of such appointment. A copy of the documents under Articles 16.4 (2) and 16.4 (3) shall be attached to such notice.

### **Article 18 Challenge to Mediator**

- 1 A Party may challenge the Mediator if circumstances give rise to justifiable doubts as to the Mediator's impartiality or independence.
- 2 A Party that intends to challenge the Mediator shall submit in writing to the JCAA a request for challenge (the "**Request for Challenge**") within two weeks from the date of its receipt of the notice by the JCAA confirming the appointment of the Mediator (the notice of appointment of the Mediator, if the Mediator is appointed by the JCAA) or the date when it became aware of any circumstance under Article 18.1, whichever comes later.
- 3 On receipt of the Request for Challenge, the JCAA shall promptly notify the other Party and the Mediator thereof.
- 4 The JCAA shall send a copy of the Request for Challenge to the other Party and the challenged Mediator and make a decision on the challenge, after giving the other Party and the challenged Mediator an opportunity to comment.

## **Article 19 Removal of Mediator**

- 1 At the written request of either Party or on its own motion, and after giving the Parties and the challenged Mediator an opportunity to comment, the JCAA may remove any Mediator if:
  - (1) he or she fails to perform his or her duties;
  - (2) he or she unduly delays in the performance of his or her duties; or
  - (3) it has become inappropriate to perform his or her duties.
- 2 The Parties may agree to remove the Mediator.
- 3 If the JCAA finds circumstances similar to those provided for in Article 23(1) of Code of Civil Procedure of Japan with regard to a Mediator, the JCAA shall remove the Mediator.

## **Article 20 Appointment of Substitute Mediator**

- 1 The JCAA shall promptly notify the Parties and the other Mediator if any Mediator ceases to perform his or her duties due to challenge, removal, resignation, or death.
- 2 If the Mediator who has ceased to perform his or her duties was appointed by a Party, the Parties or the Party-Appointed Mediators, such Party, Parties or Party-Appointed Mediators shall notify the JCAA of the appointment of the substitute Mediator by submitting the document provided for in Article 16.4 within two weeks from their receipt of the notice under Article 20.1. If such Party, Parties or the Party-Appointed Mediators fail to do so, the JCAA shall appoint the substitute Mediator under Articles 17.5 and 17.6.
- 3 If the Mediator who ceases to perform his or her duties was appointed by the JCAA under Article 20.1, the JCAA shall appoint a substitute mediator under Articles 17.5 and 17.6.

## **CHAPTER IV Mediation Proceedings**

### **Article 21 Conduct of Mediation Proceedings**

- 1 During the mediation proceedings, the Mediator shall act diligently and fairly, and help the Parties to resolve their disputes among themselves.
- 2 Upon being confirmed or appointed by the JCAA, the

Mediator shall promptly discuss with the Parties the process of conducting the mediation proceedings including the following, and conduct the mediation expeditiously:

- (1) the language(s) of the mediation;
  - (2) the schedule and the manner of exchanging the written statements and documents;
  - (3) the date and place of the mediation session;
  - (4) whether the mediator shall suggest to all the Parties its proposals for settlement and, if so, the timing thereof; and
  - (5) the time limit for concluding the mediation.
- 3 Where the Parties agree on the process for conducting the mediation proceedings, the Mediator shall conduct the mediation proceedings based upon such Parties' agreement.

## **Article 22 Separate Discussion**

- 1 Unless otherwise agreed by the Parties, the Mediator may discuss with a Party separately. However, in such circumstances, the Mediator shall disclose to all the other Parties the fact that such separate discussions have taken place.
- 2 The Mediator may not disclose any information to the other Parties that the Mediator has obtained in separate discussions with a Party unless the disclosing Party has authorized the disclosure.

## **Article 23 Confidentiality**

- 1 The mediation proceedings shall be held in private, and all records thereof shall be closed to the public.
- 2 The Mediator, the Parties, their counsels and assistants, the JCAA's officers and other staff, and other persons involved in the mediation proceedings shall not disclose facts related to or learned through the mediation proceedings. The same shall apply to them after their resignation, retirement, or completion of their duties.
- 3 Article 23.2 shall not apply where such disclosure is required by law, is necessary to implement, enforce or set aside the settlement agreement, or based on any other justifiable grounds.
- 4 Notwithstanding Article 23.2, Article 24 shall apply where the Parties present and prove the case in judicial, arbitral or similar proceedings pending between

the Parties.

## **Article 24 Effect of Case Presented in Mediation Proceedings**

- 1 If any Party presents the case, gives testimony or introduces evidence during the mediation proceedings, this does not affect the rights and duties of the Party.
- 2 Unless otherwise agreed by the Parties, a Party shall not in judicial, arbitral, or similar proceedings pending between the Parties present the case, or give or seek testimony regarding the following:
  - (1) the fact that the other Party proposed to conduct mediation proceedings or accepted the proposal to mediate, not including the fact that the mediation proceedings are taking place or has taken place;
  - (2) the fact that the other Party made admissions or any other statements as to specific matters during the mediation proceedings;
  - (3) any proposals for settlement made by the other Party or the Mediator during the mediation proceedings;
  - (4) views expressed or suggestions made by the other Party in respect of the proposals for settlement under Article 24.2(3); and
  - (5) the fact that the other Party indicated its willingness to accept a proposal for settlement.
- 3 Unless otherwise agreed by the Parties, a Party shall not in judicial, arbitral, or similar proceedings pending between the Parties introduce as evidence or make a request for disclosure regarding the following:
  - (1) a document or any other materials setting forth the matters provided for in Article 24.2; and
  - (2) a document or any other materials prepared solely for purposes of the mediation proceedings.
- 4 Articles 24.2 and 24.3 shall not apply where:
  - (1) the Parties need to state the case, give testimony or introduce evidence under Articles 24.2 and 24.3 for the purpose of implementing, enforcing or setting aside the settlement agreement; or
  - (2) any law requires the Parties to state the case, give testimony or introduce evidence under Articles 24.2 and 24.3.
- 5 A Party shall not state in judicial, arbitral, or similar proceedings pending between the Parties that the



other Parties waived their right to reject the disclosure, solely on the ground that during the mediation proceedings the other Party presents its case, gives testimony or introduces evidence regarding the matter which the other Parties may otherwise refuse to disclose.

### **Article 25 Time Limit for Concluding Mediation**

- 1 The Parties may agree on the time limit for concluding the mediation proceedings or, if the time limit is extended, the extended time limit.
- 2 Where the Parties have not agreed on the time limit under Article 25.1, such time limit shall be three months from the date when all the Mediators are appointed or confirmed by the JCAA. Such time limit shall remain the same even if a substitute Mediator is appointed due to challenge, removal, resignation, or death unless the Parties agree to extend the time limit.

### **Article 26 Settlement**

- 1 Where a settlement is reached between the Parties in the course of the mediation proceedings, the Parties shall notify the Mediator thereof and submit a copy of the settlement agreement to the JCAA.
- 2 Prior to the submission under Article 26.1, the Mediator shall sign the settlement agreement as a witness upon the request of all Parties.
- 3 Either Party may request the JCAA to attest that the mediation agreement has resulted from the mediation administered by the JCAA.

### **Article 27 Arbitral Award Based on Settlement**

Where a settlement is reached between the Parties, the Parties may agree in writing to appoint the Mediator as arbitrator and request such arbitrator to record the settlement in the form of an arbitral award.

### **Article 28 Termination of Mediation Proceedings**

- 1 The mediation proceedings shall be terminated upon any of the following circumstances:
  - (1) a copy of the settlement agreement in respect of all the disputes subject to mediation is submitted

- to the JCAA;
- (2) the respondent fails to submit the Reply to the JCAA within the time limit under Article 14.1. However, where there is more than one respondent, the mediation proceedings shall be terminated only with regard to the respondent failing to submit the Reply;
  - (3) all the Mediators are not appointed or confirmed by the JCAA due to a Party's objection under Article 17.5 within three months from the date when the JCAA initially sends the Parties the List of Candidates for Mediator(s);
  - (4) the time limit for concluding the mediation proceedings under Article 25 has expired;
  - (5) the Mediator or the JCAA receives a notice of withdrawal by any Party. However, where the number of the Parties is three or more, the mediation proceedings shall be terminated only with regard to the withdrawing Party;
  - (6) when two weeks have passed from the day following the date on which the Parties or the JCAA receives the decision from the Mediator that there is no likelihood of settlement on the grounds that, among others, any Party appears unwilling to reach settlement or the difference in the Parties' positions does not close. However, the mediation proceedings shall not be terminated if all the Parties request the Mediator to continue the mediation proceedings within this time limit; or
  - (7) the JCAA notifies the Parties in writing of its decision to terminate the mediation proceedings under Article 35.2 on the ground that a Party has failed to pay the deposit to the JCAA.
- 2 If the mediation proceedings is terminated under Article 28.1, the JCAA shall promptly notify in writing the Parties and the Mediator thereof.

### **Article 29 Commencement or Continue of Other Proceedings**

Any Party may commence or continue judicial, arbitral or similar proceedings in respect of the disputes subject to mediation unless the Parties have agreed otherwise or unless prohibited by law.

## CHAPTER V Fees and Costs

### Article 30 Remuneration of Mediator

- 1 The amount of each Mediator's remuneration shall be based on the hourly rate of JPY 50,000 (not including consumption tax) multiplied by the number of hours reasonably required to conduct the following tasks during the mediation proceedings (the "**Mediation Hours**"); except only half of the traveling time the Mediator spends for the mediation proceedings shall be included in the Mediation Hours:
  - (1) communicating with the Parties and the JCAA;
  - (2) preparing or drafting notices or any other documents;
  - (3) reviewing any written statements or documents submitted by the Parties;
  - (4) conducting research on legal or technical issues;
  - (5) preparing for the mediation sessions and, to the extent necessary for such preparation, discussing among the Mediators;
  - (6) attending the mediation sessions; and
  - (7) any other tasks which are required to conduct the mediation proceedings.
- 2 Notwithstanding Article 30.1, the remuneration of the Mediator may be calculated by any of the following methods if all the Parties so agree:
  - (1) fixed-fee;
  - (2) the hourly rate or the fixed-fee amount shall increase if a settlement is reached between the Parties during the mediation proceedings; or
  - (3) any other calculation method.
- 3 The JCAA shall determine the remuneration of the Mediator who ceases to perform his or her duties due to challenge, removal, resignation, or death unless agreed otherwise by all the Parties and such Mediator.
- 4 The Mediator shall provide the JCAA with a monthly report by the 20<sup>th</sup> of the following month that states the Mediation Hours and a description of the work performed for each day. The JCAA shall share this report with the Parties if any Party so requests.

### Article 31 Payment of Mediator's Remuneration

- 1 The Parties shall bear the Mediator's remuneration and entrust to the JCAA the necessary work for pay-

ment of such remuneration.

- 2 The JCAA shall pay to the Mediator his or her remuneration promptly following the termination of the mediation proceedings.

### **Article 32 Mediator's Expenses**

- 1 Unless otherwise agreed by the Parties, the Mediator shall be entitled to reimbursement by the JCAA of the following expenses incurred to the extent reasonable and required for the mediation proceedings:
  - (1) transportation expenses (business-class airfares and equivalent class fares for other modes of transportation);
  - (2) cost of post, courier, telephone calls, copies or any other expenses that the JCAA finds reasonable taking into consideration the nature of the case.
- 2 If the Mediator is required to use overnight accommodation, the Mediator shall be paid JPY 60,000 per night as the flat rate of *per diem* allowance which covers hotel charges, meals and other personal living expenses.
- 3 The Parties shall bear the expenses and *per diem* allowance under Articles 32.1 and 32.2 and entrust to the JCAA the necessary work for reimbursement and payment of such expenses and allowance.
- 4 The JCAA shall reimburse the Mediator's expenses and pay the *per diem* allowance under Articles 32.1 and 32.2 if the Mediator submits to the JCAA the receipt or any equivalent documentary evidence thereof.

### **Article 33 Filing Fee**

- 1 The Filing fee that the applicant shall pay at the time of submitting a request for mediation shall be JPY 50,000 (not including consumption tax).
- 2 The JCAA shall not refund to the applicant the filing fee once the mediation proceedings commence.

### **Article 34 Administrative Fee and Reasonable Expenses with Respect to the Mediation Proceedings**

- 1 The administrative fee that the Parties shall pay to the JCAA is 10% of the total amount of the remuneration of the Mediator calculated under Article 30.

- 2 The Parties shall bear the administrative fee and reasonable expenses incurred with respect to the mediation proceedings.

### Article 35 Deposit and Accounting

- 1 Following the commencement of the mediation proceedings, the JCAA shall request the Parties to make a deposit, in one or more times as the case may be, to cover the Mediator's remuneration and expenses, the administrative fee and reasonable expenses incurred with respect to the mediation (the "**Mediation Costs**").
- 2 The JCAA may suspend or terminate the mediation proceedings if any Party fails to make the deposit under Article 35.1, unless any other Party otherwise makes the deposit of such amount not deposited.
- 3 Upon termination of the mediation proceedings, if the total amount of deposit paid by the Parties to the JCAA exceeds the total amount of the Mediation Costs, the JCAA shall promptly refund the excess amount to either or both of the Parties.
- 4 Where any Party withdraw from the mediation proceedings under Article 28.1 (2) or Article 28.1 (5) and if the deposit paid by the Parties exceeds the amount of the Mediation Costs already incurred, the JCAA shall promptly refund a part of the excess amount, as the case may be, to such withdrawing Party.
- 5 Mediation Costs shall be equally apportioned among the Parties unless otherwise agreed by the Parties.

### Supplementary Provisions

- 1 The Rules shall come into effect on February 1, 2020.
- 2 Any mediation proceedings commenced under the Commercial Mediation Rules or the International Commercial Mediation Rules before the Rules come into effect shall be governed by Commercial Mediation Rules or International Commercial Mediation Rules; provided that subsequent proceedings may, upon agreement of the Parties, be conducted pursuant to the Rules. In the event of such an agreement between the Parties, the mediation proceedings that have already been conducted shall remain valid.
- 3 The Rules shall apply where the applicant request the commencement of the mediation proceedings based on the agreement that the mediation shall be conducted under the International Commercial Mediation Rules after the Rules come into effect.

## Mediation Clause

### Clause A: Mediation Clause for Contracts

All disputes, controversies or differences arising out of or in connection with this contract shall be first referred to mediation in [city and country] in accordance with the Commercial Mediation Rules of the Japan Commercial Arbitration Association.

### Clause B: Mediation Agreement for Existing Disputes

The parties hereby agree to refer the following dispute to mediation in [city and country] in accordance with the Commercial Mediation Rules of the Japan Commercial Arbitration Association:

[brief description of the dispute]

### Clause C: Mediation followed by Arbitration (Med-Arb)

The parties shall attempt to negotiate in good faith for a solution to all disputes, controversies or differences arising out of or in connection with this contract (hereinafter referred to as "disputes").

If the disputes have not been settled by negotiation within [specify desired number] weeks from the date on which one party requests to other party for such negotiation, the parties shall attempt to settle them by mediation in accordance with the Commercial Mediation Rules of the Japan Commercial Arbitration Association (hereinafter referred to as "JCAA"). The parties shall conduct the mediation in good faith at least [specify desired number] months from the date of filing.

If the disputes have not been settled by the mediation, then they shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the JCAA. The place of the arbitration shall be [city and country].

# **THE JAPAN COMMERCIAL ARBITRATION ASSOCIATION**

## **TOKYO HEAD OFFICE**

3rd Floor, Hirose Bldg.  
3-17, Kanda Nishiki-cho,  
Chiyoda-ku, Tokyo 101-0054, Japan  
Tel. : 03(5280)5161  
Fax. : 03(5280)5160  
Email : mediation@jcaa.or.jp

**URL: <http://www.jcaa.or.jp>**

