

PROTOCOL ON
**VIRTUAL
MEDIATION
PROCEEDINGS**
(VMP PROTOCOL)
AND GUIDE
TO THE AIAC
VMP PROTOCOL



ASIAN INTERNATIONAL ARBITRATION CENTRE

Table of Contents

INTRODUCTION	iv
PART 1: VMP PROTOCOL	1
1. Applicability and Scope.....	1
2. Guide and Definitions	1
3. Agreement for VMP	5
4. VMP Conduct.....	6
4.1. General Provisions.....	6
4.2. Venue	7
4.3. Participants at the Venue during the VMP	9
4.4. Test Run.....	10
4.5. Caucus and Breakout Session	10
4.6. Witness Examination	11
4.7. Mediated Settlement Agreement.....	13
5. VMP Etiquette	14
6. Document Referencing	15
7. Recording and Confidentiality of the VMP	17
8. No Liability.....	18
Schedule 1 - Undertaking of Confidentiality, Privacy and Security.....	19
PART II: GUIDE TO THE AIAC VMP PROTOCOL	20
I. Mediator's Consideration	20
II. AIAC Online Booking Form.....	20
III. AIAC VMP Protocol.....	21
IV. VMP Platform	21
V. Test Run.....	22
VI. Attendees	23
VII. Breakout Rooms	23
VIII. Screensharing.....	24
IX. AIAC IT Support Specialist	24
X. Venue IT Support Specialist	25
XI. Host of VMP	25

XII.	Recordings of VMP	25
XIII.	Electronic Presentation of Evidence	26
XIV.	Declaration	26
XV.	Procedural Irregularities	26
XVI.	Tips and VMP Etiquette	26
	General Tips	27
	Before and/or During VMP	30
	During VMP	31
	Flowchart of the Virtual Mediation Process	33

this page is intentionally left blank

INTRODUCTION

Part I contains the AIAC Protocol for Virtual Mediation Proceedings (AIAC VMP Protocol), which is intended to govern the conduct of VMP. Parties and Mediators may adopt such in whole or in part. When considering whether to adopt the AIAC VMP Protocol, Parties and Mediators should read Part II as well as the AIAC's online booking form. If adopted, such shall be enforceable on the Parties and the Mediator.

Part II contains the Guide to the AIAC VMP Protocol, which aims to assist Parties and Mediators in completing the VMP. The Guide also contains points for consideration by the Parties and the Mediator when conducting a VMP. This document is intended to serve as a reference tool only and shall be read in conjunction with Part I and the AIAC's online booking form.

PART 1: VMP PROTOCOL

1. Applicability and Scope

- 1.1. This Protocol on Virtual Mediation Proceedings (“Protocol”) applies to mediation sessions, meetings, caucuses, breakout sessions, Witness examinations and/or hearings with either no or limited in-person attendance as agreed between the Parties and the Mediator in writing, which shall hereinafter be referred to as Virtual Mediation Proceedings (“VMP”).
- 1.2. The Parties may adopt this Protocol in whole or in part to govern the VMP or may vary or use this Protocol as a guideline in developing their own procedures.
- 1.3. The Protocol is not intended to limit the flexibility that is inherent in, and is the advantage of, mediation.
- 1.4. Prior to the use of this Protocol for mediation, the Parties should evince, in writing, their agreement to the conduct of the mediation virtually and acknowledge that they will not subsequently challenge a settlement on the basis that the mediation was not held in-person.
- 1.5. In the absence of a written agreement pursuant to Clause 1.4., the Mediator should specify the reasons for proceeding with the mediation virtually prior to the VMP.

2. Guide and Definitions

- 2.1. All references in the Protocol to the singular shall include the plural where applicable and vice versa.
- 2.2. All personal pronouns in the Protocol, whether used in the masculine, feminine, or neutral gender, shall include all other genders.
- 2.3. In this Protocol, unless the context suggests otherwise, the following terms and abbreviations shall be adopted:

- 2.3.1. **“Additional Participants”** means a participant who is neither a party nor an Observer but has been requested by the Mediator and/or the Parties to attend the VMP for any reasons agreed upon by the Parties and the Mediator;
- 2.3.2. **“Agreed Bundle of Documents”** means the agreed and indexed set of documents submitted to the Mediator for the purposes of a physical or virtual meditation that the Mediator may reference or be referred to in the course of the virtual mediation. For VMP, the Agreed Bundle of Documents may be in physical, *i.e.*, print or hard copy, and/or electronic form, as directed by the Mediator;
- 2.3.3. **“AIAC IT Support Specialist”** means the IT specialist assigned by the AIAC to support the VMP;
- 2.3.4. **“Breakout Session”** means a private meeting conducted outside of the Joint Session in the course of the VMP for such purpose as required;
- 2.3.5. **“Business Day”** means a working day in the Federal Territory of Kuala Lumpur, Malaysia and excludes weekends and public holidays;
- 2.3.6. **“Caucus”** is a confidential meeting between the Mediator and one Party;
- 2.3.7. **“Clause”** means the numbered paragraphs in Part I;
- 2.3.8. **“Host”** is a person or company that provides or facilitates the use of a Platform or Technology needed for the carrying out of VMP. The default Host is the AIAC, unless otherwise agreed by the Parties and the Mediator;
- 2.3.9. **“Independent Supervising Officer”** means a neutral and independent individual appointed by a Party, or both Parties, to oversee the examination of a Witness to ensure no improper

assistance is provided to the Witness and the evidence is given independently without any interference and influence;

- 2.3.10. “**Interpreter**” means the individual appointed by either Party with the requisite language skills to translate communications or the giving of oral evidence from a foreign language to the language of the mediation *vice versa*;
- 2.3.11. “**Joint Session**” is a meeting in the Main Room facilitated by the Mediator where Parties and/or their representatives are jointly present for the conduct of Mediation;
- 2.3.12. “**Main Room**” is the meeting room created for the conduct of the Joint Session which the Participants would be present;
- 2.3.13. “**Mediator**” means a neutral third party appointed or confirmed under the AIAC Mediation Rules, by any other institutional rules, by court order, or by mutual agreement of the Parties to facilitate communication and negotiation between parties to assist the parties in reaching an agreement regarding a difference or a dispute;
- 2.3.14. “**Mediator Assistant**” means the individual appointed by the Mediator, upon agreement with the Parties, to carry out secretarial and administrative assistance functions in the mediation proceedings;
- 2.3.15. “**Observer**” means the individual who is present during the VMP other than the Parties, Mediator, Witness, Transcribers, Additional Participant, and Interpreter, and whose presence has been agreed by the Parties and the Mediator. This includes the individual authorised by the Parties to watch or listen to the proceedings, if any, provided this individual is permitted by the Mediator to observe the proceedings;

- 2.3.16. **“Participant”** means the Parties, Mediator, Witness, Transcriber, Interpreter, and all other persons identified in Clause 4.3.1. that are present in VMP upon the direction of the Mediator;
- 2.3.17. **“Party”** means a party or parties to a mediation agreement, and its Party Representative, being person(s) who appear in the mediation on behalf of the Party, if any, save where explicitly distinguished;
- 2.3.18. **“Platform”** means the video conferencing solution agreed by the Parties and the Mediator for the conduct of VMP;
- 2.3.19. **“Private Room”** means multiple rooms that are created in addition to the Main Room based on the requirements agreed by the Mediator and the Parties which are to be utilised for Caucus and/or Breakout Session;
- 2.3.20. **“Technology”** means any hardware including equipment such as microphones, headsets, web camera, etc., and software used in the VMP;
- 2.3.21. **“Transcriber”** means the individual from the transcription services company engaged by the Parties to transcribe the VMP;
- 2.3.22. **“Translator”** means the individual appointed by either Party with the requisite language skills to translate written communications and documents from a foreign language to the language of the mediation and vice versa;
- 2.3.23. **“Venue”** means the video conferencing venue location from which the Participants access the VMP;
- 2.3.24. **“Virtual Mediation Proceedings”** or **“VMP”** means either the Mediation or stage of Mediation conducted with the use of agreed Platform and Technology; and

- 2.3.25. **“Witness”** means the individual who is subject to subpoena, submits a witness or an expert report and/or is the subject of an examination or cross-examination in the course of the VMP.

3. Agreement for VMP

- 3.1. By adopting this Protocol, the Parties and the Mediator agree to the VMP in accordance with this Protocol.
- 3.2. The VMP will be deemed to have been conducted in place of an in-person mediation, as agreed.
- 3.3. The Parties and the Mediator shall agree on a Platform and Technology to be used for the VMP and notify the AIAC of such within five (5) Business Days before the intended VMP, subject to the availability of the Platform and Technology at the AIAC.
- 3.4. The Parties shall check and satisfy themselves that:
- 3.4.1. the Platform to be used, including access thereto
- (a) meets the requirements for the fair and expeditious conduct of the VMP;
 - (b) is compatible with the Participants’ Technology used for accessing the VMP; and
 - (c) adequately safeguards the confidentiality and privacy required of the VMP, for example, against any hacking, illicit access, unlawful recording, or interception by third parties;
- 3.4.2. all Participants of the VMP have engaged with the Host for a test run of the Platform and Technology; and
- 3.4.3. there are adequate contingency measures implemented for all Participants in case of sudden technical failures, disconnection, or power outages, such as teleconference and alternative

communication channels, which include, but are not limited to, designated phone numbers for telephone calls and technical support, the form of which is agreed before the VMP takes place.

- 3.5. Unless expressly reserved by any Party in writing to the Mediator and all other Parties prior to the commencement of the VMP, by participating in a VMP, a Party is deemed to have satisfied itself that the matters in Clause 3.4. have been adequately considered and fulfilled.

4. VMP Conduct

4.1. General Provisions

4.1.1. Prior to the commencement of any VMP or, at the latest, at the preliminary conference, the Parties and the Mediator shall:

- (a) review and agree on the items in Part II, and should the Parties fail to agree on any of the items within Part II, the Mediator shall rule on such item upon hearing the Parties;
- (b) identify which issues are essential for the VMP;
- (c) agree on the number and list of Participants attending the VMP, for example, the number and identity of Mediators, Parties, Party Representative, Witness, Interpreter, and technicians, and the Venue from which such Participants will access the VMP;
- (d) agree on the number of Participants for each Venue and the necessary camera and audio set-up for all Venues;
- (e) consider and agree, if necessary, on the number of virtual breakout rooms assigned to the Mediator and each Party, as the case may be, to converse and deliberate privately among themselves during the VMP;

- (f) ensure that the virtual breakout rooms are secure and only accessible to those Participants to whom the rooms are allocated;
- (g) consider and agree on the allocation of time for the Parties' Breakout Session & Caucus with the Mediator and Joint Session with the Parties and the Mediator, taking into consideration that technical difficulties may arise during the VMP and time may be lost troubleshooting the same; and
- (h) consult and agree on the virtual mediation dates, duration, and daily timetable taking into account the time zones of each Venue.

4.1.2. The Mediator may terminate the VMP at any time if the Mediator deems the video and/or audio conferencing facilities are so unsatisfactory that it is unfair to either Party to continue.

4.2. Venue

4.2.1. Participants may join the VMP from separate Venues, and shall ensure that the Venues from which they participate, and the Technology used, fulfil the threshold logistical and technological requirements set out in Clause 4.2.2. to enable them to participate in the VMP to the extent permitted.

4.2.2. Unless otherwise agreed by the Parties and the Mediator, all Venues shall satisfy the following minimum logistical and technological requirements:

- (a) the video and audio conferencing facilities shall be of sufficient quality to allow for clear audio and video and/or audio-only transmission;
- (b) the bandwidth requirements to ensure internet connection stability for group video calling as recommended by the respective Platform;

- (c) there shall be sufficient microphones for any Participant to allow for the amplification of the Participant's voice, as well as sufficient microphones to allow for the transcription and/or interpretation of the Participant's testimony and/or statement, where transcription and/or interpretation are required;
- (d) there shall also be adequate placement and control of the cameras to ensure that all Participants can be seen;
- (e) the Parties shall use the best efforts to ensure that the video and/or audio connection between the Venues is as smooth as possible, with sounds and images being accurately and properly aligned to minimise any delays;
- (f) each Venue shall have:
 - (i) reasonable access to a Venue IT Support Specialist with adequate technical knowledge and logistical ability to assist in planning, testing, and conducting the VMP with the use of the agreed Platform and Technology;
 - (ii) an AIAC IT Support Specialist assigned to resolve any technical difficulties as far as practicable; and
 - (iii) the Venue IT Support Specialist and the AIAC IT Support Specialist shall ensure they have set up a backup communication system which includes, but is not limited to, external teleconference, WhatsApp, iMessage, Slack, or Skype;
- (g) the Venue shall be at a location that provides for fair, equal, and reasonable right of access to the Parties, as appropriate; and

- (h) the Venue shall be equipped with printing and scanning facilities.

4.2.3. Where there is to be more than one person at a Venue, each person at that Venue shall be visible to, and shall also be able to see, all other Participants who will be speaking during the VMP.

4.3. Participants at the Venue during the VMP

4.3.1. Unless otherwise agreed by the Parties or directed by the Mediator, only the following Participants may be present at the Venue during the VMP:

- (a) Party;
- (b) Party Representative;
- (c) Mediator;
- (d) Mediator Assistant;
- (e) Witness;
- (f) Interpreter;
- (g) Transcriber;
- (h) AIAC IT Support Specialist, when necessary;
- (i) Venue IT Support Specialist, when necessary;
- (j) Observer; and
- (k) any other person permitted or directed by the Mediator.

4.3.2. Each Party shall provide the identity of every individual present at the Venue to the other Party and the Mediator prior to the VMP.

4.3.3. The Mediator shall take the necessary steps to verify the identity of each individual present at the start of the VMP.

4.4. Test Run

4.4.1. All Participants of the VMP shall engage in a test run with the Host using the Platform and Technology for the VMP at least two (2) Business Days before the commencement of that VMP, and if not practicable, the Parties shall communicate their unavailability as soon as possible to the Mediator and the Host.

4.4.2. Participants may also schedule separate test runs with the AIAC or other Participants, as necessary.

4.4.3. The separate test runs shall be at least two (2) Business Days prior to the collective test run that is intended for all Participants to ensure familiarity with and connectivity to the Platform.

4.4.4. Where video and/or audio conferencing facilities are required for only a particular Participant, that Participant shall ensure that they can access the VMP smoothly and is ultimately responsible for arranging the booking of video and/or audio conferencing facilities with the AIAC and notifying all Participants of such arrangements.

4.4.5. The Mediator shall determine who bears the cost of the VMP.

4.5 Caucus and Breakout Session

4.5.1. The conduct of the Caucus shall be subject to the agreement of the Parties and in any event to be determined by the Mediator.

4.5.2. The conduct of the Breakout Session shall be subject to the request from the Parties and in any event to be determined by the Mediator.

- 4.5.3. Subject to Paragraphs 4.5.1. and 4.5.2., the Platform agreed to by the Parties shall have the capability to create multiple Private Rooms for the purposes of the Caucus and Breakout Session.
- 4.5.4. The Mediator and the Parties shall agree on the frequency and duration of the Caucus and Breakout Session and each of the Parties are to be allotted equal time or as determined by the Mediator.
- 4.5.5. The Mediator shall inform and educate the Parties regarding the utilisation of the Caucus and Breakout Session.
- 4.5.6. The Mediator and the AIAC shall work together to ensure a smooth transition to the Private Room from Joint Session and vice versa.
- 4.5.7. The Mediator and the Parties shall ensure that all information, oral communications, and/or documents disclosed to the Mediator by a Party in Caucus shall be kept confidential as between the Mediator and the Party furnishing such information, oral communications and/or documents unless the Party providing the same consents to its disclosure to any other Party to the mediation.
- 4.5.8. Where the VMP relates to a matter administered by the AIAC under the AIAC Mediation Rules 2018, the provisions of Rule 10 of the AIAC Mediation Rules 2018 shall guide the conduct of the VMP.
- 4.6. Witness Examination
 - 4.6.1. The examination of the Witness shall be conducted as directed by the Mediator.
 - 4.6.2. Unless otherwise agreed by the Parties, the video and/or audio conferencing facilities at the Venue shall:
 - (a) allow sufficient part of the interior of the Venue in which the Witness is located is visible to the Mediator to show that the Witness is able to give his/her evidence at the

mediation independently without any interference and influence; and

- (b) retain sufficient proximity to the camera for the Mediator to observe the demeanour of the Witness.

- 4.6.3. The use of audio conferencing facilities, as opposed to video conferencing facilities, should only be considered in limited circumstances where there is no necessity or minimal need for Participants to observe the location and/or demeanour of the Witness.
- 4.6.4. The Mediator may request the Witness to orient his/her camera to provide a 360-degree view of the Venue in order to confirm that no unauthorised person is present.
- 4.6.5. The Mediator and Parties shall agree in writing on the manner and procedure by which the Witness shall give an oath or affirmation prior to the VMP.
- 4.6.6. The Witness shall give his/her evidence sitting at an empty desk or standing at a lectern, and the Witness's face shall be clearly visible.
- 4.6.7. All documents referred to by the Witness, whether in print or electronic, shall be simultaneously visible and legible to the Mediator and Parties.
- 4.6.8. The Mediator may direct, where circumstances permit, a representative of each Party, a representative of the opposing Party, and/or neutral Independent Supervising Officer to be present in-person observing the taking of evidence of a Witness at the Venue. The identity of the person shall be communicated in advance to the Mediator in writing. The Mediator may specify or restrict the persons who are permitted to attend as Observers to ensure that integrity of the evidence taken and fairness are not compromised.

- 4.6.9. Where an Interpreter is required for a Witness during the VMP, the Interpreter shall be briefed before the commencement of the VMP with regard to the arrangements for video conferencing that may impact or require adjustment of the interpretation service.
- 4.6.10. Where the interpretation is to be conducted simultaneously in more than one language, arrangement shall be made for the Participants to be able to select which audio channel, and language of choice, they wish to hear. The arrangement shall be subject to the technical capability of the third party real-time interpretation service provider mutually agreed to be appointed by the Parties.
- 4.6.11. During the VMP, the Mediator may give such directions as are necessary for the fair and efficacious taking of the evidence of the Witness.
- 4.6.12. The Parties shall agree on the Platform and Technology to be used by the Witness to give demonstrative/illustrative evidence in the course of the examination.
- 4.6.13. The Mediator may terminate the VMP at any time if the Mediator deems the video and/or audio conferencing facilities are so unsatisfactory that it is unfair to either Party to continue.
- 4.7. Mediated Settlement Agreement
 - 4.7.1. In the event that the Mediator and the Parties agree to execute the Mediated Settlement Agreement in an electronic form, the Mediator and the Parties shall agree on a Platform and/or Technology to be used to create, transmit, and sign such Mediated Settlement Agreement.
 - 4.7.2. The Mediator and the Parties shall discuss the scope and extent of their involvement in the drafting of such Mediated Settlement Agreement.

- 4.7.3. The Mediator and the AIAC shall work together to facilitate the creation, transmission, and signing of such Mediated Settlement Agreement.

5. VMP Etiquette

- 5.1. To achieve the necessary level of cooperation and coordination for a successful VMP, each Participant undertakes to observe the following:
- 5.1.1. identify its lead speaker before the commencement of the VMP;
 - 5.1.2. a general comprehension of virtual mediation proceedings;
 - 5.1.3. refrain from interrupting any speaker especially, to avoid audio/video lag;
 - 5.1.4. reasonable and responsible use of the Platform and Technology;
 - 5.1.5. avoid using Technology that interferes with connectivity;
 - 5.1.6. refrain from any unauthorised recording of the Joint Session and the Caucus;
 - 5.1.7. refrain from turning off the video feed during the Joint Session and the Caucus;
 - 5.1.8. refrain from taking screenshots/screen capture during the Joint Session and the Caucus;
 - 5.1.9. refrain from leaving the meeting during the whole proceeding unless agreed to and allowed by the Mediator and/or the other Party;
 - 5.1.10. ensure that the Joint Session and the Caucus are treated with utmost regard to privacy and confidentiality at all times;

- 5.1.11. avoid unreasonable use of time during the VMP;
 - 5.1.12. mute microphones when not speaking to minimise background noise;
 - 5.1.13. use headphones or earphones to minimise echo and sound interruption;
 - 5.1.14. put other electronic gadgets on silent mode throughout the VMP;
 - 5.1.15. refrain from the consumption of food and beverages that may cause audible disruption to the proceedings;
 - 5.1.16. take whatever measures or practices necessary to support the procedural efficiency of the VMP; and
 - 5.1.17. comply with any other rules as set by the Mediator.
- 5.2. In the event an essential Participant is disconnected during the VMP for any reason, the Mediator may adjourn the proceedings, and the recordings shall prevail in the case of any dispute as to what transpired immediately after the Party's connection had dropped.

6. Document Referencing

- 6.1. Documentary evidence shall be produced and referred to electronically during the VMP.
- 6.2. Alternatively, the Mediator may direct documents only be referenced physically, i.e., in print or hard copy, during the VMP, or both physically and electronically, as desired.
- 6.3. Where electronic documents are to be produced and referred to:
 - 6.3.1. the Parties shall agree on the Platform and Technology to be used for the electronic production and the electronic reference of documents during the VMP;

- 6.3.2. where required, more than one (1) Platform and/or Technology may be adopted by the Participants;
 - 6.3.3. the Platform and Technology shall enable the Mediator, Parties, and Witness at all Venues to simultaneously view and read the documents;
 - 6.3.4. the Parties may agree on utilising a shared virtual document repository or server to be made available via computers at all Venues, provided that the Parties are satisfied with the security and confidentiality of the Platform and Technology used;
 - 6.3.5. the Mediator may limit the Participants' ability to access such electronic documents during the VMP;
 - 6.3.6. unless the Parties agree otherwise, electronic documents shall be referred to and recorded in accordance with the electronic page numbers ascribed by the Platform and Technology; and
 - 6.3.7. participants shall be cognisant that pagination may vary across Platforms and/or Technology and shall inform the Mediator of such at the earliest opportunity to ensure appropriate directions can be made by the Mediator regarding the manner of pagination.
- 6.4. All other documents on the record which the Witness will refer to during the course of his/her evidence must be clearly identified, paginated, and made available to the Witness.
- 6.5. Unless otherwise agreed in writing by the Parties, the Witness shall be provided with an unmarked copy, i.e., a copy without any annotations, notes, or mark-ups of the Agreed Bundle of Documents or such volumes of the Agreed Bundle of Documents as the Parties agree or are required, at the start of the examination of the Witness.

7. Recording and Confidentiality of the VMP

- 7.1. Further to Clause 3.4.1., the Parties and the Mediator shall satisfy themselves that the Platform and Technology utilised for the VMP adequately safeguard the confidentiality and privacy required of the VMP, for example against any hacking, illicit access, unlawful recording, or interception by third parties, and compliance with data protection laws of the relevant countries.
- 7.2. Unless otherwise agreed in writing by the Parties, all Participants of the VMP shall provide a written undertaking of confidentiality on terms to be determined by the Mediator.
- 7.3. Where the recording option has been selected, and disclaimer agreed to in the AIAC's online booking form, the VMP shall be recorded by the AIAC, and the recording shall only be disseminated by the AIAC.
- 7.4. No recordings of the VMP, including a recording by the Host, shall be taken without prior leave of the Mediator.
- 7.5. Where the Mediator grants leave to record the VMP, such recording shall only be made by the AIAC or Host as agreed to by the Parties and shall only be disseminated as may be agreed between the Parties or as may be directed by the Mediator.
 - 7.5.1. such shall be recorded on the Platform hosted by the AIAC;
 - 7.5.2. the Parties shall give the AIAC written notice of at least two (2) Business Days prior to the start of the VMP to arrange for the recording; and
 - 7.5.3. the recording may be deleted by the AIAC after two (2) Business Days from the day the recording is disseminated.
- 7.6. In the event the Parties agree and require the AIAC to record the VMP:

- 7.7. The Parties and the Mediator shall ensure that the recording of the VMP will be kept confidential upon dissemination.
- 7.8. Unless otherwise agreed by the Parties, all matters relating to the VMP shall be kept confidential, except where disclosure is permitted by law.

8. No Liability

- 8.1. Neither the AIAC, its employees, Director, Mediator, nor any Mediator Assistant shall be liable for any act or omission related to the conduct of the Virtual Mediation Proceedings governed under the Protocol.
- 8.2. Neither the AIAC, its employees, nor the Director can be compelled to give evidence in any arbitration or court proceedings relating to the VMP conducted under the Protocol.
- 8.3. The AIAC shall not be liable for any data protection, confidentiality, or privacy breaches which may arise from the use of the third party VMP Platform.
- 8.4. The AIAC shall be reimbursed for any claims and proceedings issued by a third party for breach of data protection arising from third party Platform, equipment, and software.

Schedule 1 - Undertaking of Confidentiality, Privacy and Security

I, _____(NRIC/ Passport No. _____), hereby undertake that:

- (a) I shall not record any part of the VMP in whatever form unless authorised in advance by the Parties and the Mediator;
- (b) I shall not access the documents stored in the [name of the agreed platform] without prior authorisation from the Parties and the Mediator;
- (c) I shall not disclose the documents, information, or contents of the VMP to third parties without prior authorisation from the Parties and the Mediator unless required by the law; and
- (d) I shall not allow the presence of any other person at the Venue who is not a Participant to the VMP unless agreed by the Parties and directed by the Mediator.

[Signature]

.....

Name:

Date:

PART II: GUIDE TO THE AIAC VMP PROTOCOL

GUIDE TO THE AIAC VMP PROTOCOL

I. Mediator's Consideration

The Mediator shall ensure that all the Participants are properly notified of the agenda for the VMP and that the Parties and Participants arrange for the necessary technical aspects to test and connect to the Platform. In scheduling the VMP, the Mediator shall consider:

- a) the different time zones of Participants, where applicable;
- b) the number of Venues and the possibility for the Mediator to be present in the same Venue;
- c) the method of taking evidence from Witnesses to ensure that the integrity of any oral evidence is preserved and given independently without any interference and influence;
- d) the method for confirming and identifying all Participants, including any AIAC IT Support Specialist, Venue IT Support Specialist, or Independent Supervising Officer;
- e) the possibility of using demonstratives including screensharing views or electronic Agreed Bundle of Documents hosted on a shared document platform that guarantees access by all Participants;
- f) when allocating time during the VMP, the Mediator shall set aside time for housekeeping matters, objections, applications, and any other unexpected incidents or events; and
- g) to make any procedural order as the Mediator deems necessary.

II. AIAC Online Booking Form

The AIAC online booking form shall be completed in advance of each VMP booking at the AIAC. This booking form indicates the preliminary selection of the VMP Platform,

date and timing of the VMP, test run date, and other technical assistance that may be required for the VMP by the Parties and the Mediator. This booking form may also be used by the AIAC to provide a quotation of the AIAC's services for the intended VMP. The Parties should be mindful to inform the AIAC ahead of time whether any technological, logistical, legal, and administrative assistance and/or tools are required and identify the Participants, specifying whether any breakout rooms are only for certain Participants. The booking form shall be completed at least five (5) Business Days prior to the scheduled VMP.

III. AIAC VMP Protocol

The Protocol (Part I) serves as a reference document for best practices in conducting a VMP. Although non-binding in nature, the Protocol contains definitions of terms used in a VMP¹, which may be adopted by Participants of a VMP and guidance on the procedural and practical aspects of conducting a VMP, including technological and logistical requirements at the Venue, hearing etiquette, private Caucus etiquette, document production, and matters pertaining to the recording and confidentiality of a VMP. The Parties and the Mediator are also assisted with a flowchart of a VMP which may serve as a useful reference. The Parties and the Mediator are requested to familiarise themselves with the Protocol and to endeavour to conduct the VMP in accordance with the same.

IV. VMP Platform

Unless otherwise agreed by the Parties and the Mediator, the default Platform to be used for VMP shall be Zoom.

The above has regard to the need for selection of the most suitable VMP Platform to ensure the efficient and effective conduct of a VMP.

There are two main categories of a VMP Platform – teleconferencing platforms and videoconferencing platforms.

¹ Any and all definitions used in the VMP Protocol shall have the same meaning herein.

Both categories can be further sub-divided into:

- a. **IP-based platforms**, *i.e.*, those which rely on dedicated hardware/equipment typically found in large firms and hearing centres, such as Polycom system; and
- b. **Cloud-based platforms**, *i.e.*, those which allow individual participants remote access through specialised software applications, such as Zoom, WebEx, Microsoft Teams, BlueJeans, and Skype for Business.

The VMP platforms available for use at the AIAC are third party solutions. The Parties and the Mediator shall satisfy themselves that the third party Platform, equipment, and software utilised for the VMP adequately cater the features requested by the Parties such as breakout rooms and safeguard the confidentiality and privacy required of the proceedings, for example, against any hacking, illicit access, unlawful recording, or interception by third parties. The AIAC will not be liable for any data protection, confidentiality, or privacy breaches that may arise from the use of the third-party VMP solution.

The AIAC has licences for the use of the Polycom System, Zoom, and WebEx to facilitate a VMP. Further information on the available Platforms can be obtained by contacting reservations.team@aiac.world.

V. Test Run

At least two (2) Business Days prior to any VMP, the AIAC will conduct a Test Run with the Parties, Mediator, AIAC IT Support Specialist, and any other Participants and/or Observers. The purpose of this test run is to ensure that the selected Technology, services, and Platforms work smoothly and as required for all Participants. The test run also allows the Parties and the Mediator to: familiarise themselves with virtual solutions, associated Technology, and functions used; request for any unforeseen technological, logistical, or administrative support from the AIAC; and/or to resolve any troubleshooting queries with respect to the Technology used to conduct the VMP.

For Hearings, Meetings, Conferences and Mediation Sessions, Parties and the Mediator are encouraged to schedule a Test Run with the AIAC at least forty-eight (48) hours prior to the VMP.

The duration of the test run depends on the number of Participants, the types of Technology used, the scope of the services to be provided by the AIAC, and the complexity of any troubleshooting queries. Generally, the test run will be anywhere between 30 to 90 minutes.

The Parties and the Mediator shall also consider whether any individual test runs are required. This may be useful where a Mediator decides to be a Host of the VMP. By allowing the Mediator to test the Technology at his own pace, it will allow for him/her to be more familiar and comfortable with the Platform and thereby giving him more command of its features during the VMP. If an individual test run is required, the AIAC shall be notified of the same at least two (2) Business Days prior to the test run with all Participants to ensure the smooth conduct of the VMP.

VI. Attendees

The potential attendees in a VMP are identified in Clause 4.3.1. of Part I. To safeguard the privacy and confidentiality of the VMP, it is imperative that only those authorised to be present at the VMP are provided with an electronic link to log in to the VMP.

In some instances, the Parties and the Mediator may consider live streaming the main hearing to authorised Observers through a designated link. If such is agreed, the AIAC must be informed to create the appropriate link and monitor the Observers.

VII. Breakout Rooms

In a mediation session, breakout rooms are essential for private deliberations as well as private Caucuses during the proceedings. A similar mechanism can be replicated in virtual platforms such as Zoom, whereby a virtual breakout room can be created. The Parties and the Mediator need to consider the number of virtual breakout rooms that may be required during a mediation. Configurations for such virtual breakout rooms may include virtual rooms for the:

- a) Mediator or Mediator and Mediator Assistant;

- b) Parties and/or Party Representatives;
- c) Mediator and Party Representatives;
- d) Party Representatives; and
- e) Witnesses only.

For this reason, the AIAC requests for a list of Participants for each dedicated virtual breakout room to ensure that the room allocations are appropriately managed, and confidentiality concerns are mitigated in a timely manner.

VIII. Screensharing

Screensharing is a function of the Platform that allows a Participant to share their display screen with all other Participants in the VMP. It is advantageous where an electronic Agreed Bundle of Documents is to be used as part of the proceedings, especially in the absence of engaging a third party Electronic Presentation of Evidence (“EPE”) provider. Where the screensharing function will be used, the AIAC will run through the operation of this function with the relevant Participants during the test run.

IX. AIAC IT Support Specialist

An AIAC IT Support Specialist will be assigned to every VMP. The scope of the AIAC IT Support Specialist’s role will be as follows:

- a) to provide adequate technical support to ensure that any technological difficulties encountered by the Parties and the Mediator are minimised;
- b) to take control of a Participant’s device remotely, with the Participant’s consent for the purpose of rendering technical assistance; and
- c) to be available on-call throughout the VMP where physical presence is not required for its entirety.

The AIAC IT Support Specialist cost is embedded into the AIAC's VMP Rates, which are available [here](#).

X. Venue IT Support Specialist

The Participants who log in remotely from a Venue shall ensure a Venue IT Support Specialist is on standby to assist them during the VMP. The Participants are at liberty to designate the Venue IT Support Specialist of their choice. The identity of the designated Venue IT Support Specialist shall be circulated amongst the Participants of the VMP before the same takes place.

XI. Host of VMP

The Host is the individual who has overall technological control of the VMP. The functions a Host can undertake include placing people, including a Witness, into and out of a breakout room and controlling the commencement and closure of each VMP session.

Generally, the Hosts will be the AIAC IT Support Specialist assigned to the VMP, and the Mediator Assistant, if any, would be a co-Host where such has been agreed to by the Parties and the Mediator.

In some instances, the Mediator may also be inclined to be the co-Host of the VMP. In such a case, the AIAC can do a test run with the Mediator to ensure he is comfortable with using the Host functions. This is an option that is available in the AIAC online booking form.

XII. Recordings of VMP

The AIAC is able to record VMP for the use of the Parties and the Mediator. Both audio-only and audio & video recording options are available. Guidance on the AIAC's recording services for VMP is found in the Protocol. Where the Parties and the Mediator indicate that they would like a VMP recording, the same may be specified in the AIAC online booking form.

XIII. Electronic Presentation of Evidence

An EPE system allows evidence to be displayed to all Participants in a VMP simultaneously. The Parties may manage the system themselves by having Counsel to navigate, or it may be operated and managed by a third-party service provider, such as Scribe, Opus 2, and Epiq with access to the Agreed Bundle of Documents.

When using an EPE, the Parties should agree on a practical naming convention to be used throughout the Agreed Bundle of Documents. Such should also be communicated to the third party service provider, if involved. This allows for the evidence to be easily displayed on the EPE and assists with keeping track of the record within the transcript.

To ensure the EPE runs smoothly, the Parties should confirm that it is compatible with the bundling format and system used for the VMP.

XIV. Declaration

By completing the AIAC online booking form the Parties and the Mediator agree to use the VMP Platform at their own risk. To reiterate, the VMP Platform used by the AIAC is a third party platform. Hence, the AIAC shall not be liable for any failures, breaches of data and/or confidentiality, losses, or damages that may occur.

XV. Procedural Irregularities

In the event a procedural irregularity occurs due to a technical or connectivity issue, the Mediator shall ensure that all reasonable measures were taken to avoid any advantages being provided to one Party. For the avoidance of doubt, if the Mediator is concerned that an advantage may be provided, it should adjourn the VMP until the issue can be resolved and shall provide written reasons for proceeding in such a manner.

XVI. Tips and VMP Etiquette

The following is a non-exhaustive list of tips and etiquette for the Participants to consider when preparing for or conducting a VMP. These tips are merely recommendations and not mandatory guidelines for VMP.

General Tips

- a) Internet Connection: at times, wireless internet connection can be unstable; therefore, where possible, use an ethernet cable.
- b) Bandwidth Requirements: each Platform recommends a minimum standard of bandwidth requirements to ensure a smooth connection. Parties are advised to check the bandwidth requirements of the agreed Platform. Zoom, for example, has the following minimum requirements:²
 - For group video calling:
 - 800kbps/1.0Mbps (up/down) for high quality video*
 - For gallery view and/or 720p HD video: 1.5Mbps/1.5Mbps (up/down)*
 - Receiving 1080p HD video requires 2.5mbps (up/down)*
 - Sending 1080p HD video requires 3.0 Mbps (up/down)*
- c) Room Settings: quiet room, away from distractions or uninvited guests, including animals that may disrupt the VMP.
- d) Audio: use of a noise-cancelling headset or headphones is recommended to minimise external disruptions. Desktop speakers with a microphone with USB connectivity may be used but is not recommended.
- e) Camera: where possible, use a separate webcam from the built-in camera on a laptop, which is typically not of high quality. Position the camera at eye level.
- f) Lighting: to avoid shadowing effects and squinting, replace natural light with lamps. If using lamps, white bulbs are preferred over yellow incandescent bulbs.
- g) Background Set-up: virtual backgrounds and/or blurring functions in any form shall not be used in the VMP to ensure full confidentiality and to prohibit third party interference with the VMP, such as Witness coaching. When positioning their camera, Participants shall ensure that the background is proper, i.e., neutral-coloured walls or office or library settings.

² See [https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#:~:text=For%201%3A1%20video%20calling%3A%20600kbps%20\(down\)%20for,%3A%2060%2D80kbps%20\(down\)](https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#:~:text=For%201%3A1%20video%20calling%3A%20600kbps%20(down)%20for,%3A%2060%2D80kbps%20(down))

- h) Backup Communication: in the event of technological difficulties, which may be encountered, a backup communication system should be in place, with options including external teleconference, WhatsApp, iMessage, Slack, Skype, etc.
- i) Screen Set-up: ideally, Participants should have more than one screen available. These may include the primary desktop, laptop, and external screens. One possible set-up is to have four screens for the (1) video stream, (2) EPE, (3) transcript, and (4) communications.
- j) Visible Participants: throughout the duration of the VMP, the Mediator and Parties, if not represented, or Parties' Representatives shall be visible at all times. During the examination of any Witness, the Witness shall be visible to all Participants.
- k) Translation and/or Interpretation: in the event translation and/or interpretation services are required, such shall be done simultaneously. The Parties and the Mediator may either agree to have a Translator simultaneously translate the transcript or for an Interpreter to be present and simultaneously translate the oral submissions or witness examinations as may be the case.
- l) Disconnection:
 - (i) Mediator: in the event a Mediator is disconnected, the VMP shall stop, and the AIAC IT Support Specialist shall contact the disconnected Mediator by means of the backup communication to resolve the issue. If the issue is not resolved within a timely manner (15-20 minutes), then the VMP shall adjourn until the technical difficulty can be resolved.
 - (ii) Parties/Parties' Representatives: in the event the Party or Party's Representative is disconnected, the VMP shall stop, and if still connected, another individual of the Party or the Party's Representative's team or the AIAC IT Support Specialist shall contact the disconnected Party/Party's Representative by means of the backup communication to resolve the issue. If the issue is not resolved within a timely manner (15-20 minutes), then the VMP shall adjourn until the technical difficulty is resolved.

- (iii) Participants, other than those in items a and b above: in the event a Participant is disconnected from the VMP, the VMP should continue to proceed, and the Party with whom that Participant is associated should contact the Participant using a backup communication to swiftly resolve the issue. The AIAC IT Support Specialist will be available to assist if needed.
- m) Connectivity: in the event the connectivity, i.e., the connection to the Platform and Technology, is clear during one of the Party's submissions, examinations, etc., but "spotty", "lagging", or otherwise having issues during another Party's submissions, examinations, etc., the Parties and the Mediator should consider adjourning the VMP until the connectivity is clear.
- n) "Time Buffers" and/or Backup Dates: when determining the time allocated for the VMP, the Parties and the Mediator should consider allocating time buffers and/or backup dates for the VMP. For any joint sessions, Caucus, examinations, etc., that require simultaneous translation and/or interpretation, a time buffer should be allocated for such. Additionally, if, for example, the connectivity, i.e., connection to the Platform and Technology, is clear during one of the Party's Caucus, examinations, etc., but "spotty", "lagging", or otherwise having issues during another Party's Caucus, examinations, etc., the Parties and the Mediator should consider adjourning the VMP until the connectivity is clear.
- o) Independent Supervising Officer: if an Independent Supervising Officer is appointed to observe a Witness during examination and/or cross-examination, such Independent Supervising Officer shall produce an affidavit stating it is neutral, independent, and impartial of all Parties, Party Representatives, Mediator, and Mediator Assistant, and that it shall undertake the overseeing of the Witness examination and/or cross-examination to ensure no improper assistance is provided to the Witness and the evidence is given independently without any interference and influence.
- p) Venue: all Venues of the VMP, i.e., the individual locations from which the participants will participate in the VMP, should have printing and emailing

facilities in case documents need to be sent, viewed, and/or executed during the course of the VMP.

Before and/or During VMP

- a) Before the Mediation, the Mediator may schedule several early calls with each of the Parties to complete the exploration and possibly the beginning of the bargaining stage before bringing all Parties together.
- b) At the outset of the VMP, the Parties shall identify the lead speaker as well as provide a list of all Participants to the Mediator and Transcriber, if applicable.
- c) The Mediator shall explain Caucus and how it will work, what that process looks like, what to expect and other housekeeping rules: separate private virtual breakout rooms, where Parties can still communicate with mediators via “chat” function, and where the Mediator will bring parties back together in the main session if and when appropriate as well as the method of transition to the main session.
- d) The Parties and the Mediator shall agree on the compilation and labelling of the electronic bundle of documents to be used in the VMP well in advance. Options for the electronic storage of the Agreed Bundle of Documents should also be considered by the Parties and the Mediator, such as a virtual document repository through a cloud-based storage system, including Dropbox and Google Drive, *etc.*
- e) If hard copy bundles of documents are to be referenced during the VMP, all Participants shall have access to the relevant documents, and the hard copies must be identically paginated, collated, and labelled.
- f) Prior to any virtual hearing, the Parties and the Mediator shall agree to the duration and frequency of breaks and/or Breakout Session & Caucus throughout the VMP, as well as the logistics in respect thereof, including whether: everyone needs to sign in and sign out; everyone will be placed into breakout rooms; should the video continue running but audio set on mute, *etc.*
- g) Where transcription services are to be engaged, consider: whether access to live transcription will be possible and whether it is required; how live transcription will be displayed at each Venue, including the need for additional screens; whether the

transcription provider's platform allows for annotations and notes; and how daily transcriptions will be shared between the Parties and the Mediator.

- h) Where Translators or Interpreters are to be engaged, consider: whether a simultaneous or sequential interpretation and translation are required; whether the interpretation and translation are to be made in multiple languages which require separate audio feeds; etiquette to minimise the interruption of the interpreters; whether audio recordings of the interpretation and translation are required to verify their accuracies, *etc.* Timing should also be considered where translators are engaged as it will invariably extend the duration of the Witness examination or cross-examination being undertaken.
- i) Where Observers are present only to observe and are not to appear, participate, or speak in the proceedings, the Parties and the Mediator should consider having a separate live stream of the main proceedings through a password-protected link.
- j) On the Mediated Settlement Agreement, the Parties and the Mediator are to agree in advance as to how the settlement agreement will be drafted and executed.

During VMP

- a) At the commencement of each VMP, the Mediator should verify the identities of the Participants and confirm that the Observers have been provided access.
- b) At all times, the Mediator and the individual speaking should be visible to the Participants. Those not speaking should mute their audio to minimise any interference with sound/audio quality.
- c) Participants in the VMP should use their best endeavours to adhere to the VMP Etiquette set out in Clause 5. of Part I.
- d) Screensharing should be used for the presentation of demonstrative exhibits and visual aids where possible.
- e) Breakout Session & Caucus: The flow and conduct of the Mediation shall be at the discretion of the Mediator, which may include several private Caucus and joint sessions. The Mediator shall ensure that both Parties are treated with

equality and fairness at all times during the proceedings. The agreed Platform shall have the capability to feature Breakout Session and Caucus.

- f) Mediated Settlement Agreement: The Mediator and the Parties shall agree on a Platform and/or Technology to be used to create, transmit, and sign the Mediated Settlement Agreement. The role of the parties in drafting the Mediated Settlement Agreement shall also be agreed upon by the Parties and the Mediator.

- g) All Venues of the VMP, *i.e.*, the individual locations from which the Participants will participate in the VMP, should have printing and emailing facilities in case documents are needed to be sent and/or viewed/executed during the course of the VMP.

Flowchart of the Virtual Mediation Process

(Please be informed that the flowchart below is for general illustrative purposes only. The AIAC, the Parties and the Mediator are at liberty to depart from the below procedure.)

1. Schedule the Mediation Session

- a) The Parties or either Party to submit the Online Application Form to the AIAC.³
- b) AIAC to confirm the following to the Parties and the Mediator:
 - (i) Designated AIAC Case Counsel/Mediator Assistant;
 - (ii) Approval to the application;
 - (iii) Case reference number;
 - (iv) Privacy and confidentiality expectations;
 - (v) Schedule of the test run; and
 - (vi) Direction to upload all material documents for easier referencing.

2. Prior to Test Run

- a) AIAC to:
 - (i) provide the necessary direction of the Platform to the Parties and the Mediator, and to reiterate the confidentiality of such direction;
 - (ii) forward any necessary protocol of the Platform to the Parties and the Mediator;
 - (iii) ensure that Participants are only given entry to the Platform upon approval by the AIAC;
 - (iv) ensure that the Platform has sufficient features to cater to any request for Private Room;
 - (v) provide a contingency communication plan with alternative methods of contact, e.g. conference line or parties' phone number; and
 - (vi) ensure that chat settings are disabled to avoid any occurrence of private messaging between the Participants.

³ Please see the Online Booking Form for Virtual Hearings

b) Parties and Mediator to:

- (i) decide whether the test run with the Parties and the Mediator is to be conducted separately or jointly;
- (ii) as far as possible, to ensure that the Participants of VMP are accessing the same facilities and settings that will be used in the actual VMP;
- (iii) test audio and video on the devices. If using a mobile device, ensure it is fully charged and/or connected to a charging cable;
- (iv) ensure the stability of internet connection;
- (v) silence other devices, turn off notifications and check the background; and
- (vi) secure its workspace from interruptions. Inform any persons in the vicinity that they will be unavailable and in a private/confidential meeting during the time scheduled.

3. Test Run

a) AIAC to confirm the following:

- (i) that the Parties have agreed to participate in mediation and virtual mediation hosted by the AIAC;
- (ii) that the Parties will be displaying their full name in the Platform;
- (iii) that the audio, internet, and video connection are compatible; and
- (iv) that the Parties and the Mediator are aware of the virtual mediation process and its housekeeping rules.

b) AIAC and the mediator to discuss the following Zoom features:

- (i) Virtual waiting room;
- (ii) Main Room;
- (iii) Screen-sharing;
- (iv) Private Room;
- (v) Joint session; and

- (vi) Presence of IT assistance.
- c) AIAC to confirm the dates of the Mediation Session.
- d) AIAC to check with the Parties whether there are documents to be shared and uploaded.

4. Mediation Session

- a) Mediator to proceed with the following, as appropriate and as determined by the Mediator:

- (i) Introduction and Opening Statement.
- (ii) Reinforce confidentiality undertakings (as mentioned in the AIAC Protocol and any agreed additions).
- (iii) Confirmation and verification from the Parties that they are alone and there is no other unauthorised person who is within listening distance from the Parties.
- (iv) Confirmation that no recording session of any kind is permitted.
- (v) Explanation that everyone is addressing one another by actual name to facilitate communication.
- (vi) Explanation of Caucus and Breakout Session and how that will work with virtual private rooms.
- (vii) Confirmation that all material documents have been duly uploaded.

- b) Mediator to explain the ground rules:

- (i) Mediator to consider timing/duration of sessions, breaks and Breakout Session and Caucus.
- (ii) Mediator to keep the Parties clearly informed on logistics.
- (iii) Mediator to provide instructions on how to reconnect in the event of disconnectivity and the back-up telephone or chat function to communicate.

- c) Mediator to:
- (i) proceed with Joint Session, Caucus and Breakout Session;
 - (ii) facilitate the drafting of the Mediated Settlement Agreement;
 - (iii) review Draft Mediated Settlement Agreement and Method for Signing the Mediated Settlement Agreement; and
 - (iv) conclude or terminate the Mediation Session.