



# **KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, THURSDAY, 26<sup>th</sup> DECEMBER, 2019.

## **GOVERNMENT OF KHYBER PAKHTUNKHWA LOCAL GOVERNMENT, ELECTIONS & RURAL DEVELOPMENT DEPARTMENT**

### **NOTIFICATION**

*Peshawar, Dated the 16<sup>th</sup> December, 2019.*

**No. SOG/LG/14-37/ADR Rules/2019:** In exercise of the powers conferred by Section 118-A of the Local Government Amendment Act, 2019 read with clause 24 of the seventh schedule. The Government of Khyber Pakhtunkhwa is pleased to make the following rules.

### **THE KHYBER PAKHTUNKHWA ALTERNATE DISPUTE RESOLUTION RULES, 2019.**

#### **PART -I** **General**

**1. Short title, extent and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Alternate Dispute Resolution Rules, 2019.

(2) These rules shall be applicable at the sub-divisional level of all merged areas.

(3) These rules shall come into force at once.

**2. Definitions.**--- (1) In these rules, unless there is anything repugnant in the subject or context,-

- (a) "Act" means the Khyber Pakhtunkhwa Local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXVIII of 2013);
- (b) "amicable settlement of dispute" means amicable settlement of dispute under these rules through arbitration, reconciliation and mediation;
- (c) "Appendix" means the Appendix appended to these rules;
- (d) "Assistant Commissioner" means the Assistant Commissioner of the concerned sub-division;

- (e) "Commissioner" means the Commissioner of the concerned Division;
- (f) "conciliator" means a person, nominated for amicable settlement of disputes under rule 3 of these rules;
- (g) "convener" means the Assistant Commissioner, who shall administer the proceedings of the mediation council for amicable settlement of disputes;
- (h) "dispute" means a difference or disagreement of civil nature between two individuals or parties on the issues, as specified in **Appendix-I**;
- (i) "Deputy Commissioner" means the Deputy Commissioner of the concerned district;
- (j) "mediation committee" means a mediation committee constituted under rule 4 of these rules;
- (k) "mediation council" means a mediation council constituted under rule 3 of these rules;
- (l) "merged areas" means the districts and sub-divisions, merged with the Province of the Khyber Pakhtunkhwa vide Board of Revenue Notification No. Rev: VI/FATA Merging/28250 dated 19/7/2018; and
- (m) "party" means a party to a dispute, referred to mediation council or the mediation committee for amicable settlement of disputes.

(2) Words and expressions used but not defined in these rules, shall have the same meanings as are assigned to them in the Act.

## **PART- II** **Amicable Settlement of Disputes**

**3. Constitution of the mediation council.**---(1) Subject to nikkat system of the tribes in a sub-division, for amicable settlement of disputes, the Deputy Commissioner shall constitute, at each sub-division level, a mediation council of conciliators.

- (2) A person shall be included in the mediation council, if he is-
  - (a) of major age;
  - (b) bonafide resident of that sub-division;
  - (c) not a convict from a Court of law;
  - (d) has proven integrity and impartiality;
  - (e) a person having in depth knowledge of tribal customs and laws; and

(f) known to be experienced and respected in the field of amicable settlement of disputes.

(3) The Deputy Commissioner shall issue a formal notification of the constitution of the mediation council in the manner as specified in **Appendix-II**.

(4) A mediation council shall consist of a total of forty (40) members, representing every tribe in the sub-division and ten (10) members from the office of the Deputy Commissioner.

(5) The tenure of conciliators shall be three (03) years from the date of their nomination under sub-rule (3).

(6) In case of vacancy, in the mediation council, due to resignation, termination, death of a conciliator or any other reason, the Deputy Commissioner shall appoint a conciliator or conciliators fulfilling the criteria as specified in sub-rule (2), within a period of one month:

Provided that the conciliators so appointed shall continue for the remaining term.

(7) A conciliator may resign, at any time, in writing addressed to the Deputy Commissioner, from the membership of the mediation council which shall be forwarded by the Assistant Commissioner to the Deputy Commissioner for his approval:

Provided that a conciliator shall continue to work till his resignation is accepted by the Deputy Commissioner.

**4. Constitution of medication committee.**---(1) On receipt of an application for amicable settlement of a dispute, The Assistant Commissioner/convener shall nominate a mediation committee of conciliators in the manner as specified in **Appendix III**, from the mediation council in any of the following manners:

- (a) the Assistant Commissioner/Convener shall nominate whole of the committee with the consent of both the parties; or
- (b) the Assistant Commissioner/Convener shall communicate list of members of the mediation council to the parties and in case of no objection, the Assistant Commissioner/Convener shall nominate the committee from amongst the list; or
- (c) the Assistant Commissioner/Convener shall obtain nominees, amongst the mediation council, from the parties and may add one or any such number(s) of conciliator(s) from his side as he deems fit:

Provided that while constituting a committee in any of the above manners under these rules, the Assistant Commissioner/Convener shall ensure that the total number of conciliators shall remain odd.

Provided further that in cases where one or both parties are female, one conciliator may be female keeping in view the social constraints in the respective subdivision.

(2) The conciliators, before taking the responsibility, shall take oath, which shall be administered by Assistant Commissioner, in the manner as specified in **Appendix-IV**.

(3) Where a conciliator displays or is accused of partiality or malpractice, the aggrieved party may file a complaint to the Assistant Commissioner, before formulation of the committee, or at any time during the proceedings in this respect. If on scrutiny of such complaint the Assistant Commissioner is satisfied that prima facie case is made out, he shall summon the aggrieved party and serve notice to the conciliator, listing the grounds, rendering him unsuitable for performing his functions upon receipt and consideration of the reply from such conciliator and after hearing and recording the grounds, Assistant Commissioner/Convener, may remove him from the committee or may disqualify such conciliator with the approval of Deputy Commissioner.

5. **Dissolution.**---(1) The Deputy Commissioner may, on his own or on the complaint from general public and after due satisfaction for reasons to be recorded in writing, dissolve the mediation council or remove any of its conciliator, if it or he found guilty of any mutiny, anti-state activities or of having been violated any of the provisions of any law for the time being in force.

(2) The Deputy Commissioner on such dissolution or removal, as the case may be, shall reconstitute or reappoint the mediation council or its conciliator, whichever the case may be, within a period of thirty (30) days subject to rule 3 of these rules.

6. **Disqualification.**---A conciliator may be disqualified on the following grounds:

- (a) non-attendance of two proceedings of the mediation committee;
- (b) non-referral of the case within due time under these rules;
- (c) in case of partiality;
- (d) has taken any consideration from any party.

### PART -III REFERRAL OF DISPUTE FOR AMICABLE SETTLEMENT

7. **Dispute brought by the parties.**---(1) All disputes may be brought to the office of the Convener by the parties, either verbally or through a written application as specified in **Appendix-V**:

Provided that if a request is made verbally, the office of the Convener shall reduce it to writing in the shape of a format, as specified in **Appendix-V**.

(2) The Convener or his nominated officer or official shall issue a receipt, maintained in the register, as specified in **Appendix-VI**, showing the date of receipt of the application and the names and addresses of the parties and the nature of dispute. The register, so maintained, shall be open to inspection by the parties at office hours.



(3) The Convener on receipt of an application shall ensure attendance of both the parties and seek for their consent and, therefore, nominate a mediation committee in the manner as laid down in rule 4, as specified at **Appendix-IV**, from amongst the mediation council:

Provided that no application, involving matrimonial dispute or domestic violence, shall be processed, except upon a complaint, made by a husband or a wife or elders of their family, as the case may be.

**8. Quorum.**---Two third of the total conciliators shall constitute the quorum, for the purpose of mediation committee.

**9. Procedure of settling disputes brought by the parties.**---(1) The Convener may refer a case, brought by the parties, to the mediation committee, for amicable settlement of the dispute subject to Agreement as specified in **Appendix-VII**.

(2) A dispute, referred to the mediation committee, under sub-rule (1), shall be facilitated by the Convener by providing logistic support to the mediation committee, during its proceedings.

(3) The mediation committee may call for record, examine witnesses and may ask for the production of any person or document for the proceedings under these rules:

Provided that the order given for production of a document, witness or the person, so required for the proceedings for amicable settlement of disputes, shall be binding on the parties.

(4) If any conciliator is approached or influenced by any party, he shall immediately inform the Convener in writing.

(5) The Convener may, on his own satisfaction or complaint so received, withdraw such conciliator or conciliators, so influenced, from the mediation committee and shall include any other conciliator from amongst the mediation council:

Provided that the Deputy Commissioner may after due enquiry and satisfaction, order for removal of any such conciliator from the mediation committee or mediation council, who is accused of partiality or malpractice.

(6) The proceedings of the mediation committee shall take place in the office of the Convener, Additional Assistant Commissioner of the concerned sub-division or any other suitable place which the conciliator and parties agree upon and which the Convener approves after being satisfied about the safety and security of the place.

(7) When a dispute involves two (2) parties, who belong to different sub-divisions in the same district, the Deputy Commissioner shall constitute a mediation committee from both the sub-divisions after securing recommendations from both the Conveners of the concerned sub-divisions.

(8) When a dispute between two parties, who belong to different districts, the Deputy Commissioners of both the districts shall send their nomination to the Commissioner for the purpose of appointment of mediation committee. In that case, the office of the Commissioner or his Jirga hall or any other such place which the Commissioner may deem appropriate, shall be meeting place, for the mediation committee:

Provided that the Convener in that case shall be any of the Deputy Commissioners in whose districts the dispute arises or the one authorized by the Commissioner, as the case may be.

(9) If the mediation committee is unable to resolve the dispute, such dispute may be referred to another mediation committee in the same district through the Deputy Commissioner to resolve solely or jointly. In case of such failure, the Deputy Commissioner may request the Commissioner to refer such case to adjacent district to resolve such dispute.

(10) In resolving the dispute, the mediation committee shall proceed in the following manner:

- (a) the Convener shall, in consultation with the parties, subject to the time line, as specified in rule 11, fix the time schedule, dates as well as the venue for the meeting of the mediation committee;
- (b) the meetings shall be arranged separately or jointly with the parties, giving consideration to the facts of the dispute;
- (c) the parties shall attend the proceedings in person but for some cogent reasons, which shall be recorded, they may be represented by authorized representatives who must be well versed with the facts of the case and such representation must be approved by the Convener; and
- (d) the parties may present their contentions verbally or in writing but that must be supported by duly sworn affidavit and supporting documents:

Provided that all the proceedings of the mediation committee shall be reduced to writing and shall be discussed with the Convener after every meeting.

(11) The mediation committee may conduct site visits or inspections for fact finding in order to reach a final and just decision.

(12) The mediation committee may seek reasonable assistance from individuals or institutions, as it deems appropriate, for the amicable settlement of the dispute in hand, and may obtain the services of experts with regard to any technical aspects of the dispute.

(13) During the proceedings of the amicable settlement of dispute, the mediation committee shall make every reasonable effort for ensuring informal, cost free and simplified resolution of disputes between the parties.

(14) The mediation committee shall be guided by the principles of fairness, justice, impartiality and equality, giving due consideration to the rights and obligations of the parties as well as to the specific circumstances of the dispute in hand, for its amicable settlement.

(15) Without prejudice to the voluntary nature of the proceedings for amicable settlement of disputes, the parties shall be asked to enter and participate in the proceedings in good faith and with an explicit intention of settling the dispute amicably.

(16) Where the parties agree, in writing, to be bound by the final settlement, facilitated by the mediation committee, the Convener shall announce the final settlement Agreement at the end of the proceedings, in the manner as specified in **Appendix-VIII**, which shall be signed by the Convener and conciliators. The signatures and thumb impressions of the parties to the dispute shall also be obtained thereon, and attested copies of the Agreement shall be provided to both the parties.

(17) On receipt of the findings of the mediation committee, the Convener, by recording his reasons in writing, may-

- (a) pass an order in accordance with the findings of the majority of the mediation committee; or
- (b) refer the case back to the mediation committee for further inquiry and findings; or
- (c) refer the dispute to another mediation committee subject to the provisions of rule 4 and other relevant provision of these rules.

**10. Role of the conciliators and parties.**---(1) The conciliators shall make every effort in assisting the parties to dispute in arriving at an amicable settlement of the dispute. They shall also attempt to ensure proper communication of the views of the parties to each other, assist them in identifying issues, remove misunderstandings, explore areas of compromise and generate options in an attempt to resolve the dispute and convince the parties, about the long term benefits of a just settlement of the dispute. The conciliators shall, however, not impose, coerce or try to dictate terms for a specific resolution of the dispute. It shall be the responsibility of the conciliators to explain their facilitating role in the dispute to all the parties.

(2) The meetings and contents of the conciliation proceedings of the mediation committee shall be confidential and none of the conciliators shall disclose them to a third party, unless expressly permitted by the parties.

(3) The parties shall also maintain confidentiality of the conciliation proceedings of the mediation committee and shall not divulge or use the whole or any part thereof as evidence or material against the other party in the same or a related dispute at any other forum.

(4) The privacy of the conciliation proceedings of the mediation committee shall be maintained and presence of any other person, except the parties, shall be subject to the mutual consent of the parties and who shall also be bound by confidentiality of the proceedings.

(5) If, during the conciliation proceedings before the mediation committee, any party initiates any other process of resolution of the dispute, such party shall immediately disclose the fact to the mediation committee and to the other party.

**11. Timelines.**---(1) The mediation committee shall decide the cases, referred to it within a period of two months, extendable for a further period of one month, after approval of the Deputy Commissioner for reasons to be recorded in writing:

Provided that if the mediation committee is unable to decide a dispute within maximum period as specified above, the mediation council may be dissolved for inefficiency by the Assistant Commissioner with the approval of Deputy Commissioner.

**12. Powers to review.**---If any party to dispute has any reservation on decision of the mediation committee, it may apply to the Convener for review and the Convener shall proceed further as per clauses (a), (b) or (c) of sub-rule (17) of rule 9 of these rules.

**13. Appeal.**---(1) Notwithstanding anything contained in rule 12, any party, aggrieved from the decision of the mediation committee, may prefer an appeal to the Deputy Commissioner on procedural issues, within a period of one month of the decision of the mediation committee:

(2) The Deputy Commissioner, while disposing of appeal, may pass an order by deciding the appeal or remand the case to the mediation committee for reconsideration:

Provided that the Deputy Commissioner, while disposing of the appeal, shall give an opportunity to both the parties to be heard.

(3) The order, passed by the Deputy Commissioner, in appeal, shall be final and binding upon the parties.

**14. Implementation.**---The mediation committee for the purpose of implementation of its decision, or as the case may be, the decision of the Deputy Commissioner in appeal, may bind the parties in such manner as it may deem fit.

**15. Code of conduct and ethics for conciliators.**---The conciliators shall make every effort to abide by the code of conduct, as specified in **Appendix -IX**, which shall serve as recommended guidelines in facilitating amicable settlement of disputes.

**16. Voluntary services.**---(1) The mediation committee and the office of the Convener, as the case may be, shall not charge anything, in cash or kind, in lieu of the services, rendered in connection with the conciliation proceedings, conducted under these rules.

(2) The mediation committee shall make all reasonable efforts to meet the genuine requirements for the smooth functioning of the mediation committee. The mediation committee shall work on voluntary basis for their respective communities for social cohesion and conflict free society.

**17. Record.**---(1) The official or Clerk of the Convener's office, duly authorized by the Convener, under his overall supervision and guidance, shall maintain record of the disputes, referred to or brought before the mediation committee, along with the names, addresses of the parties, subject of dispute, original applications and referrals, if applicable, as well as copies of the final reports and settlement Agreement.

(2) The official or Clerk, as authorized under sub-rule (1), shall, under the supervision of the Convener, prepare a monthly report, giving the list of information, covering the items, mentioned under sub-rule (1) above. If required, the copies of such reports shall also be sent to the relevant offices for information.

**18. Immunity.**---The conciliators shall enjoy immunity and shall not be held liable for anything done or omitted to do, in good faith, during the proceedings of amicable settlement of dispute. The conciliators shall not be summoned in a Court of law for giving testimony with regard to such proceedings, they conducted as conciliators.

**19. Training.**---The Local Government, Elections and Rural Development Department of Government may, from time to time, arrange trainings, workshops and group discussions to sensitize and educate the mediation council, officials of the Convener's office, and to enhance their capacity and knowledge in alternate dispute resolution and related fields on the following subject:

- (a) alternative dispute resolution and conciliation techniques for resolution of disputes;
- (b) code of conduct and ethics;
- (c) local government laws and rules;
- (d) land, property and revenue laws, including laws on inheritance;
- (e) family laws;
- (f) human rights and child rights;
- (g) basic knowledge Court procedure (civil); and
- (h) any other subject deemed appropriate.

**20. Repeal and savings.**---(1) The Khyber Pakhtunkhwa Musalihati Jirga Rules, 2006, to the extent of merged areas, are hereby repealed.

(2) Notwithstanding the repeal of the said rules, any notification or instructions issued, orders made or disputes settled under the repealed rules shall continue to remain in force until altered, amended or withdrawn.

**SECRETARY  
LOCAL GOVERNMENT ELECTIONS AND  
RURAL DEVELOPMENT DEPARTMENT.**

**Appendix-I**  
**[see rule 2(1)(h)]**

The following issues/matters/disputes may be brought before the Conciliators for amicable settlement under Khyber Pakhtunkhwa Alternate Dispute Resolution Rules, 2019 (Contractual Disputes).

1. Disputes related to contracts.
2. Commercial disputes.
3. Partnership disputes.
4. Family disputes excluding disputes relating to physical violence.
5. Disputes relating to land and property.
6. Disputes relating to inheritance.
7. Any other dispute capable of being amicably settled.



APPENDIX-II

[see rule 3(3)]

NOTIFICATION

No. \_\_\_\_\_.-In exercise of the powers conferred by sub-rule (3) of rule 3 of the Khyber Pakhtunkhwa Alternate Dispute Resolution Rules, 2019, the Deputy Commissioner is pleased to constitute a mediation council of conciliators, for amicable settlement of disputes of the sub-division \_\_\_\_\_ comprising of the following conciliators:

<u>Name of Conciliator</u>	<u>S/D/W of</u>	<u>Address</u>
1. _____ _____	_____ _____	_____ _____
2. _____ _____	_____ _____	_____ _____
3. _____ _____	_____ _____	_____ _____

Dated

Official Stamp

Signature of the  
Deputy Commissioner

APPENDIX-III

[see rule 4(1)]

**NOMINATION OF MEMBERS FOR THE MEDIATION COMMITTEE  
FOR THE AMICABLE SETTLEMENT OF DISPUTE**

I, \_\_\_\_\_, Convener of the mediation committee for amicable settlement of disputes do hereby appoint the following members as a mediation committee for amicable settlement of disputes for facilitating parties to the dispute, referred for amicable settlement:

**Title of the case**

- 1.
- 2.
- 3.

Assistant Commissioner/Convener:  
Mediation Committee for Amicable Settlement of Disputes  
Name of sub-division:

APPENDIX-IV  
[see rule 4(2)]

Oath of Office

I, \_\_\_\_\_, selected as conciliator of the mediation committee for amicable settlement of disputes of sub-division \_\_\_\_\_ do hereby solemnly swear (affirm in case of non-Muslims)-

- That I shall bear true faith and allegiance to Pakistan and strengthen its ideology, integrity, solidarity and prosperity through discharge of my duties and perform my functions in accordance with section 118-A of the Khyber Pakhtunkhwa Local Government Act, 2013, and the Khyber Pakhtunkhwa Alternate Dispute Resolution Rules, 2019 and other relevant laws, rules, bye-laws and regulations honestly, efficaciously and efficiently to the best of my ability.
- That I shall act in accordance with law and rules, and that as a conciliator of the mediation committee for alternate dispute resolution shall ensure that disputes, brought to mediation committee for amicable settlement of disputes, are resolved amicably, through conciliation and all functions within my scope are carried out lawfully, diligently and consistent with the objectives of the mediation council for amicable settlement of disputes.
- That I shall always work in the interest of the people.
- That I shall promote access to justice, and to the best of my ability, prevent misuse of power, ensure equality and promote the involvement of oppressed persons, particularly women in securing their own rights.
- That I shall coordinate with the *Convener* in discharge of my functions.
- That in all circumstances I shall do right to all people according to law, without fear or favor, ill will or discrimination.
- That I shall not directly or indirectly communicate or reveal to any person any matter which shall become known to me in my capacity as Conciliator, except as may be required for the due discharge of my duties.

\_\_\_\_\_  
Signature of Declarant

Counter Signed

\_\_\_\_\_  
Convener.

APPENDIX-V

[see rule 7(1)]

APPLICATION TO THE ASSISTANT COMMISSIONER  
OF SUB-DIVISION/CONVENER  
FOR AMICABLE SETTLEMENT OF DISPUTES

I \_\_\_\_\_ S/o \_\_\_\_\_ R/o \_\_\_\_\_ and  
I \_\_\_\_\_ S/o \_\_\_\_\_ R/o \_\_\_\_\_ have a dispute  
which briefly is regarding the following subject matter:

I/we have not been able to resolve this dispute through my/our own efforts thereof I/We seek the guidance of the mediation committee for amicable settlement of disputes for resolving this dispute. I/we agree that we shall disclose all the requisite information to the mediation committee for amicable settlement of dispute for the complete understanding of the dispute by it and that we will abide by the rules of the Khyber Pakhtunkhwa Alternate Dispute Resolution Rules, 2019 and such other rules as may be agreed to at the amicable settlement of disputes meetings.

1. Applicant Name: _____	2. Applicant Name: _____
Applicant CNIC No.: _____	Applicant CNIC No.: _____
Address: _____	Address: _____
Date: _____	Date: _____
Diary No: _____	Diary No. _____

Signature by receiving

Stamp

Date

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX-VI**

[see rule 7(2)]

**REGISTER TO BE MAINTAINED BY THE MEDIATION COMMITTEE FOR  
AMICABLE SETTLEMENT OF DISPUTES**

Left page of Register for entering applications to the mediation committee for amicable settlement of disputes

Application No. and Date.	Name/ Address of Applicant.	Name/ Address of Opposite Party.	Brief Title and Description of the Case.	Entered through (person filing form) Signature of Applicant.	Signature of the Opposite Party.

Right page of Register for entering settlement of the mediation committee for amicable settlement of disputes

S. No.	Date of Settlement Agreement.	Name/ Address of Applicant.	Name/Address of Opposite Party.	Number of Sittings.	Brief Description of Settlement Agreement.	Signature of Conciliator and Parties.

APPENDIX-VII

[see rule 9(1)]

**SETTLEMENT AGREEMENT**

THIS AGREEMENT is made and entered into atsub-division ..... between.  
.....s/o .....r/o..... and ..... s/o.....r/o.....

WHEREAS a dispute arose between us and we agreed to resolve the dispute through the efforts of the mediation committee for amicable settlement of disputes of (name and address) of subdivision on ..... (date)

AND WHEREAS the dispute has been reached between us on the terms and condition set out below:

WE THE PARTIES hereby agree:

- (a) to abide by the terms and conditions of final settlement Agreement set out below, reached through our own volition and the efforts of the mediation committee for amicable settlement of dispute;
- (b) to abide by all such matters as have been resolved in terms of the Agreement to refer to settlement signed on \_\_\_\_\_;
- (c) and to implement and comply with the terms of this final settlement Agreement fully in letter and spirit and to report compliance to the Convener for amicable settlement of dispute within thirty (30) days of the signing of this final settlement Agreement.

IN WITNESS whereof we have placed our signatures and thumb impressions on this final settlement Agreement in the presence of the Convener and conciliators for amicable settlement of disputes:

1. Name of Party: \_\_\_\_\_ 2. Name of Party: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

CNIC No. \_\_\_\_\_ CNIC No. \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Convener of the mediation committee for amicable settlement of disputes

Member: \_\_\_\_\_

Member: \_\_\_\_\_

Member: \_\_\_\_\_



APPENDIX –VIII

[see rule 9(16)]

**FINAL AGREEMENT FOR SETTLEMENT OF DISPUTE THROUGH  
COMMITTEE  
FOR AMICABLE SETTLEMENT OF DISPUTE**

THIS AGREEMENT is made and entered into at between of \_\_\_\_\_  
On this day \_\_\_\_\_ and \_\_\_\_\_

WHEREAS a dispute has arisen between us and we desire that the mediation committee for amicable settlement of dispute of address. \_\_\_\_\_, where we reside to resolve the disputes, we the parties to the dispute agree as follow:

1. to accept and abide by the rules for Alternate Dispute Resolution Rules, 2019 and such other rules as may be agreed to at the mediation committee for amicable settlement of disputes meetings, all of which shall be deemed to be part of this Agreement.
2. to abide, in particular, by the following provision of the afore-mentioned rules:
  - (a) to maintain complete confidentiality at all times in respect of all matters coming to our knowledge during the conciliation process from any source whatsoever;
  - (b) not to compel any conciliator to divulge such matters to any authority whatsoever, at any time;
  - (c) to maintain, at all timed confidentiality in respect of views expressed, of proposals, offers or suggestions made rejected or agreed to, by the other party with regard to a possible settlement or of admissions made by another party, at any time during the meetings and not reveal such information in litigation, arbitration or other dispute resolution process;
  - (d) to disclose fully and honestly to each other and to the conciliators, all information which is relevant and which will aid the parties to reach a settlement and is appropriate to the conciliation process;
  - (e) to disclose to the mediation committee and to each other forthwith if any steps are taken to initiate any other dispute resolution process during the pendency of the conciliation process; and
  - (f) that the mediation committee and the conciliators shall not be held liable in a manner, whatsoever, for any act or omission in connection with the conciliation
3. to abide by the interpretation of any rules, relating to the dispute resolution, which may be given by the conciliators and of any other rules which may be given by the committee.
4. To abide by any settlement that may be reached at the conclusion of the dispute resolution process and to implement it faithfully in letter and spirit.

IN WITNESS of this Agreement we have placed out signatures and thumbs impression at \_\_\_\_\_ on \_\_\_\_\_ in presence of witnesses of this day of \_\_\_\_\_

For and on behalf of the First Party.

For and on behalf of the Second Party.

Signature :

Signature :

\_\_\_\_\_

\_\_\_\_\_

Name :

Name :

\_\_\_\_\_

\_\_\_\_\_

Designation

: Designation

\_\_\_\_\_

\_\_\_\_\_

WITNESSES:

WITNESSES:

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

## APPENDIX-IX

[ see rule 15 ]

## CODE OF CONDUCT AND ETHICS

The Conciliators shall follow and observe these principles strictly and with due diligence.

**a. Ethics Framework for Conciliators – underlying principles**

**i. Duty, Selflessness and Service to the Community:**

Duty and selfless service to the community is a laudable practice, sanctioned and preferred in Pakhtun and Islamic traditions. There is a great history and tradition in Khyber Pakhtunkhwa of dispute resolution – so that individuals, families and the communities are reconciled so that all may live together peaceably. The Conciliator must not charge any fees for his/her services. Any “bond” taken during conciliation must be returned as agreed once the dispute is resolved – or when parties have agreed to take their dispute elsewhere. Conciliators should make decisions and settlements solely for the benefit of the disputants and the community at large. They should not conduct conciliations for financial or material gain for themselves, their families, associates or friends. Conciliators must not use their position for any political advancement.

**ii. Honesty and Integrity:**

Conciliators must not place themselves under any financial or other obligation to persons or organizations that might influence them in performing their conciliation duties. Conciliators must declare any current or potential conflicts of interest. Conciliators shall disclose to all parties any ties, association, or potential biases they may have with any of the disputants. This includes acknowledgement of any prior relationship withdraw – this applies at the beginning and during the process.

**iii. Objectivity, Impartiality and a Commitment to Equal Rights:**

Conciliators must remain objective, impartial, just, fair and conciliatory throughout the process. They must not allow themselves to be influenced by external factors or undue pressure in the performance of the mediation. Conciliators should share with the parties the approach he or she will be following in resolution of the disputes.

Conciliators will recognize that certain groups or individuals are treated differently by society. This may be on the grounds of age, gender, race, sect, ethnicity, marital status, disability, social and economic status, sexual orientation, religious belief or other personal traits. Conciliators must not discriminate against, or treat these individuals or groups differently or in a less favorable way. All parties to a dispute should enjoy the same rights to a fair conciliation process. Conciliators should be aware of how disputants might be feeling, be empathetic, and think from their perspective – especially so, for weaker disputants.

**iv. Confidentiality of Conciliation Services:**

Conciliation proceedings and all information obtained from and about the disputants and other participants through the conciliation process shall be treated as confidential – unless there is express permission from the parties to share such information for research and data reporting purposes only. Personal details such as names, contact details, addresses, family details or other personal information must not be disclosed. The Conciliator and parties should also appreciate that there may be a situation where parties appear in court and in such a case, confidentiality should be respected. Any settlement agreement shall be presented in court for evidence purposes only and the Conciliator should be exempted from becoming a party to the case as a witness, unless public policy, law, rules or regulation requires Conciliators to share any information pertaining to the terms and conditions of the settlement.

**v. Leadership:**

Conciliators often enjoy the status of community leaders. The fact that disputants come to Conciliators is indicative of the high esteem in which Conciliators are regarded in the community. They should protect, support and promote the principles contained in this Code by demonstrating the highest levels of integrity and impartiality, thus setting an example for the community as a whole. Conciliators shall also strive to learn from other professionals in the field and share their experience and knowledge with others.

**vi. Commitment to legislative framework:**

Conciliators undertake to conciliate, conduct and reach settlements in accordance with the Constitutional and legislative frameworks of Pakistan and Khyber Pakhtunkhwa. Mediators will pay particular attention to the Fundamental Rights Chapter of the Constitution of Pakistan in Part II of Chapter 1 and must undertake to promote and protect such rights at all times, particularly those relating to women, children, ethnic or religious minorities and other marginalized groups. Women, children and persons of disability, where relevant, have right to be consulted in decisions that affect them – this is particularly so where issues of giving informed consent arise. Conciliators should keep themselves updated and be aware of any changes in relevant legislation.

**b. Standards for Conciliators:**

**Competence and Self-assessment:**

Due to the sensitive and difficult role of the Conciliators, they will maintain high standards of skill and competence while providing conciliation services. Conciliators should always consider whether they have the right knowledge, skills, experience and attributes to mediate any given dispute. If there is a real possibility that the Conciliator is inhibited by any of his or her personal attributes in achieving successful, independent, fair and unbiased conciliation services, he or she should withdraw from the process. If a dispute is not within his or her skill, knowledge and competence, the Conciliator will withdraw from the process and refer the dispute to other conciliators or fora.

**Characteristics – a Conciliator should-**

- Be of a good character, impartial and trustworthy
- Have a good reputation in the community
- Have good knowledge of the area, community, culture and custom
- Be calm, patient and not get emotionally involved
- Have a good education (this includes formal and informal experiences, knowledge of family values) knowledge of Islamic teaching and awareness of relevant Pakistani laws;
- Illiteracy or lack of formal qualifications/education should not be a bar to being selected as Conciliator, if other attributes can be relied upon
- Appreciate the need for confidentiality
- Be devoted to the principles of community service

**c. Preventing harm:**

**Safety and Security:**

At all times, the safety and security of the Conciliators and disputants must be paramount. Disputants and Conciliators must undertake not to bring any arms or ammunition or other weapons to the mediation process. Conciliators must not undertake any conciliation where their personal safety and security and that of their families may be compromised. Where there is potential for violence, Conciliators should make it clear that they are unable to assist until there is a credible commitment to a non-violent resolution of the dispute. During the process, if it is likely that safety and security might be compromised, Conciliators should withdraw from the process and report the matter to the police.

Conciliators must select a safe and secure venue for the Conciliation process. If necessary, precautionary measures must be put in place – consider also alerting the police. Where there is high tension between the disputants, it might be necessary to ensure that they are not in the same venue at the initial stages of mediation. Parties should only meet when the conciliator is satisfied that it is safe for them to do so.

**Protecting and promoting the rights of all:**

Conciliators commit to upholding the legitimate, legal, and constitutional and human rights of all disputants and others who may be affected by the settlements. Conciliators should never pressurize or coerce disputants into accepting a settlement which is detrimental to their rights, even if the disputants themselves agree to such infringements. Legitimate, free and informed consent must be obtained from women where this is an issue in the dispute. This is particularly important in family and marriage related disputes. Although scuffles and fights amongst children (where adult members of families are like to be involved and the risk of dispute escalating is high) may be subject to conciliation. However, serious issues around child welfare, neglect and abuse should not be mediated. Such disputes should be referred to the Family, Child and Welfare Department. Conciliator must persuade disputants not to enter into settlements which are unlawful. Where such attempts fail, Conciliators must withdraw from the process.

While the Conciliator has a duty to be impartial, he or she also has a responsibility to protect the interests of women, children, ethnic or religious minorities, marginalized and other vulnerable groups, especially those who are unable to give voluntary and informed consent to settlements. Conciliators must not support settlements which are based on illegal customary practices (including Swara and deprivation of inheritance). Conciliators have a positive duty to challenge any settlement based on illegal customary practices and must use their best endeavors to discourage such settlements. Where all efforts to discourage such settlements have failed, the Mediator should withdraw from Conciliation. This is particularly so when disputants negotiate over women and children or do not conform to law and the constitution of Islamic Republic of Pakistan. Any such unlawful practices should be reported to the authorities.



## CONCILIATION PROCESS

### Contacting Conciliators:

Disputants may contact Conciliators based in the community directly or they may be referred by the court to a community Conciliator with the consent of the parties. Members of the community and other person(s) may, with the consent of all the disputants, refer disputes to Conciliators

### Pre-conciliation session:

At the initial meeting of Conciliators and disputants, Conciliators should explain how the conciliation process works, what is expected for disputants and what Conciliators can (and can't) do. Issues to be discussed might include:

- No aggressive language, behavior or violence will be tolerated; no weapon of any kind will be brought to the conciliation process
- The process works ONLY when disputants come to the process with good will and a bona fide willingness to reach a settlement
- The process and all of the details will remain confidential
- There will be no fee payable to the Conciliator – any "bond" will be paid back
- Each disputant will have an equal opportunity to present their arguments, information and witnesses and to challenge the information given against them.
- The conciliation process is not necessarily about deciding who is guilty or at fault – but to find a solution acceptable to all parties
- The conciliation process is wholly voluntary and the Conciliator will refuse the service if there is any coercion; **both** parties must agree to the appointment of the Conciliator; either party can withdraw from the process at any time
- There will be no imposition of the Conciliator's will or personal views – the disputants themselves will be expected to reach and agree a settlement
- The Conciliators cannot support settlements which will violate the legitimate rights of other(s) (e.g. Swara and inheritance deprivation)
- All disputants will be expected to honour any settlement they've agreed
- The settlement will be written down and signed by all disputants.
- Current or potential conflict of interest
- civil proceedings by either or both disputants. [if so, great care should be taken to ensure this is not done to pressurize a weaker disputant].

### Conciliation:

During conciliation process, full disclosure of all facts related to the dispute must be shared with the Conciliator so that the information may be used appropriately and in the best interest of the disputants. If the outcome of the conciliation results in an acceptable settlement to all, an agreed settlement will be drafted detailing all the issues involved and terms on which parties have agreed to settle their dispute or differences. Each disputant and the Conciliator will sign the settlement. In some disputes it may be necessary to undertake the mediation with another Conciliator, with the consent of the disputants.

Disputes involving women should be mediated by female Conciliators where possible. Where a dispute involves a member of a minority group or where a disputant suffers a disability, Conciliators should ensure that such disputants feel completely comfortable with the process.

Conciliators should ask an ethnic minorities disputant whether the presence of a member of a minority group will assist, subject to the other disputant(s) consent. Conciliators must ensure that the needs and interests of the weaker disputant is not compromised – any power or relationship imbalance between disputants should not unduly influence the process.

If conciliation is unsuccessful, parties may refer their dispute to state justice institutions such as police and/or courts. In such cases, conciliators should inform disputants about their option registering an F.I.R or commence civil proceedings.

#### **Informed settlements in Conciliation:**

The conciliator has a duty to ensure that disputants fully understand the options available, the advantages and disadvantages in order to make informed decisions. The Conciliator should advise disputants to obtain legal advice, if this deemed helpful. The Conciliatory should ensure that each of the participants fully understands the terms and conditions of the settlement. Disputants must be given a reasonable opportunity to assess and consider the settlement so that they are entirely comfortable with the outcome.

#### **Fair and Just Settlements in Conciliation:**

While Conciliators must be impartial between disputants, they must ensure that the process is fair, especially when there are differences in the power and authority of the disputants. Conciliators should try and defuse any manipulative or intimidating negotiating techniques utilized by disputants. They should take great care to ensure that the disputant who may have registered an F.I.R or civil proceedings is not doing so to put undue pressure on the opposing disputant. If the Conciliator finds that it is not possible to eliminate such undue pressure and unfair bargaining techniques from the process, he or she should not permit the mediation to proceed and should disassociate themselves from the process.

#### **Do No Harm Safeguards:**

In order to reduce the risk of doing unintentional harm, Conciliators should abide by following safeguards:

- Withdraw from the process if the process or the settlement involves breaching human rights, or violates Constitutional or other legal provisions of Pakistan – particularly the rights of children, women, ethnic or religious minorities or other vulnerable groups and report the same to state authorities (e.g. Swara and inheritance deprivation)
- Disputes involving serious issues of child welfare, neglect and abuse should not be conciliated
- Refuse to take financial awards/fee for taking sides with one disputant against the other
- Discourage parties from pressurizing and threatening each other for a settlement, especially through registration of F.I.R or civil proceedings
- In order to ensure the safety of conciliators and the disputants and their associates confidentiality of conciliation proceedings shall be maintained

- Women, children, minorities, vulnerable and the disadvantaged should not be discriminated against and should not be pressurized to accept settlements without their free will and informed consent. Consent, or lack of it, in family/marriage disputes must be considered and taken into account.
- Any monies provided by disputants in form of a "bond", security or surety must be returned to disputants.
- Do not make it worse for the disputants
- Settlements should be with a view to de-escalating the dispute

**Network and knowledge-sharing:**

To create cohesion and a collegiate platform for Conciliators, a Network organization will be established by the Conciliators. The Network will provide all Conciliators with an opportunity to take forward conciliation work as a group and promote the services within the community. The Network, as a body, will also allow Conciliators to manage the needs and interests of the Conciliators as a body. The network forum will also provide an opportunity for Conciliators to share experiences, share knowledge, identify gaps in learning and development with a view to create an atmosphere of mutual support and advancement. Conciliators should be willing to share knowledge and good practices with others – they should avail themselves of training opportunities and be willing to impart knowledge to others.

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**SECRETARY TO  
GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
LOCAL GOVERNMENT ELECTIONS & RURAL DEVELOPMENT DEPARTMENT**