



INSTITUTE OF CONSTRUCTION INDUSTRY ARBITRATORS

PROMOTING PEACE AND FRIENDSHIP IN THE CONSTRUCTION INDUSTRY



MEDIATIVE- CONCILIATION RULES, 2025.



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APPLICATION

Article 1

- 1) These Rules shall apply to mediative conciliation of disputes arising out of or relating to a contractual or other legal relationships where the parties seeking an amicable settlement of their dispute have agreed that these Mediative Conciliation Rules ('Rules') apply.
- 2) The parties may agree to exclude or vary any provision of these Rules at any time provided they adhere to measures that are necessary to promote peaceful existence and protect public interest.
- 3) Where any of these Rules is in conflict with any provision of any agreement of the parties, the agreement of the parties shall prevail.

COMMENCEMENT OF MEDIATIVE CONCILIATION PROCEEDINGS

Article 2

- 1) A party initiating mediative conciliation shall send to the other party a written invitation to mediative conciliation under these Rules, briefly identifying the subject of the dispute.
- 2) The requirement for the invitation to be written is met where it is by an electronic communication including communication by means of data messages, that is any information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.
- 3) If the party initiating mediative conciliation does not receive a reply within thirty days (30 days) from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to mediative conciliation. If he so elects, he shall inform the other party accordingly.
- 4) Mediative Conciliation proceedings commence on the date the other party accepts this invitation to mediative conciliation in writing.
- 5) The parties shall enter into a Mediative Conciliation Agreement, formalizing their commitment to the mediative conciliation process. This agreement shall follow the form provided in the Appendix to these Rules and shall remain irrevocable unless mutually agreed otherwise by the parties.

NUMBER OF MEDIATIVE CONCILIATORS

Article 3

Unless the parties agree otherwise, there shall be one mediative conciliator. Provided that where there is more than one mediative conciliator, they shall act jointly.

APPOINTMENT OF MEDIATIVE CONCILIATOR

Article 4

- 1) In mediative conciliation proceedings with one mediative conciliator, the parties shall jointly appoint a sole mediative conciliator equipped with the requisite subject-matter competence.
- 2) In mediative conciliation proceedings involving three mediative conciliators, each party shall appoint one mediative conciliator, and the two appointed conciliators shall jointly select the third mediative conciliator.
- 3) The Institute may, upon request by the parties or one of the parties, appoint one or more mediative conciliators, provided that where the request is by one party in respect of a sole mediative conciliator or the third mediative conciliator, the other party's confirmation shall be required to validate the appointment.
- 4) In appointing a mediative conciliator, the Institute shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediative conciliator.

SUBMISSION OF STATEMENT TO MEDIATIVE CONCILIATOR

Article 5

- 1) Upon his appointment, the mediative conciliator shall request each party to submit to him a brief written statement describing the general nature of the dispute and the points in issue.
- 2) Each party shall also send a copy of his statement to the other party.
- 3) The mediative conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. Each party shall also send a copy of the further statement to the other party.
- 4) At any stage of the mediative conciliation proceedings, the mediative conciliator may request a party to submit to him such additional information as he deems appropriate.

REPRESENTATION AND ASSISTANCE

Article 6

Any party may be represented or assisted by any persons of his choice. The names and addresses of such persons are to be communicated in writing to the other party and to the mediative conciliator upon signing of the Mediative Conciliation Agreement; such communication shall specify whether the appointment is made for purposes of representation or of assistance.

ROLE OF MEDIATIVE CONCILIATOR/POWER OF THE MEDIATIVE CONCILIATOR

Article 7

- 1) The mediative conciliator shall within a period of twenty-eight days (28 days) from the date of his appointment, assist the parties independently and impartially in their attempt to reach an amicable settlement of their dispute, failing which the mediative conciliator shall make a formal conciliation award within fourteen days (14 days) based on the representation made at the mediation stage, provided always that the settlement agreement duly signed by the parties or the conciliation award shall be binding on all parties and enforceable as an arbitral award.
- 2) The mediative conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- 3) The mediative conciliation process shall remain strictly confidential, and no information, evidence, or admission provided or made during the process shall be disclosed or relied upon by any party solely on the basis that it was presented at the conclusion of mediative conciliation.

Additionally, the records of proceedings of the mediative conciliator and any subsequent conciliation award shall not be included in the documents transmitted to the arbitrator in any subsequent proceedings.

- 4) The mediative conciliator may conduct the mediative conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes of the parties, and the need for a speedy settlement of the dispute.
- 5) The mediative conciliator may, at any stage of the mediative conciliation proceedings, propose terms of settlement of the dispute.

COMMUNICATION BETWEEN MEDIATIVE CONCILIATOR AND PARTIES

Article 9

- 1) The mediative conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
- 2) Unless the parties have agreed upon the place where meetings with the mediative conciliator are to be held, such place will be determined by the mediative conciliator after consulting with the parties, having regard to the circumstances of the mediative conciliation proceedings.

DISCLOSURE OF INFORMATION

Article 10

When the mediative conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate.

CO-OPERATION OF THE PARTIES WITH MEDIATIVE CONCILIATOR

Article 11

The parties shall, in good faith, co-operate with the mediative conciliator and, in particular, endeavor to comply with a request by the mediative conciliator to submit written materials, provide evidence and attend meetings.

SETTLEMENT AGREEMENT AND CONCILIATION AWARD

Article 12

- 1) When it appears to the mediative conciliator that there exist elements of a settlement, which would be acceptable to the parties, he may formulate the terms of a possible settlement and submit them to the parties for their observation. After receiving the observations of the parties, the mediative conciliator may reformulate the terms of a possible settlement in the light of such observations.
- 2) If the parties reach an agreement on a settlement of the dispute, the mediative conciliator shall draw up a written settlement agreement which shall be signed by the parties and the mediative conciliator; it shall be enforceable and binding as an arbitral award.

- 3) Failing the ability of the parties to reach a settlement of the dispute, the mediative conciliator shall thereafter make a formal conciliation award which shall be enforceable and binding on the parties as an arbitral award, within fourteen days (14 days), based on the representation of the parties made at the mediation stage.
- 4) The mediative conciliation proceedings shall be terminated upon the signing of the settlement agreement or the delivery of the conciliation award by the mediative conciliator, with both outcomes binding on the parties.
- 5) Either of the parties may within 14 days from the date of the receipt of his copy of the conciliation award, by notice in writing ("Notice of Renunciation") to the Institute renounce the conciliation award.
- 6) A Notice of Renunciation shall not be made on any ground except those expressly stated in paragraph 7 below.
- 7) A conciliation award may be renounced where-
 - a) the party who submits the Notice of Renunciation furnishes proof that-
 - i. a party to the Mediative Conciliation Agreement was under some legal incapacity,
 - ii. the conciliation award contains decisions on matters which are beyond the scope of submission to mediative conciliation, provided that, if the decisions on matters submitted to mediative conciliation can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to mediative conciliation be set aside; or
 - b) the Institute finds that the-
 - i. subject matter of the dispute is otherwise not capable of settlement by mediative conciliation under the laws of Nigeria, or
 - ii. conciliation award is contrary to public policy of Nigeria.
- 8) In the event of a renunciation, the matter shall proceed to arbitration, and the Institute shall either call upon the arbitrators nominated or agreed upon by the parties or appoint an arbitrator or arbitrators, as appropriate.
- 9) A renunciation of a conciliation award may apply only to specific aspects of the award, in which case the remaining provisions shall remain binding, and only the renounced portion shall be subject to arbitration. However, if the Notice of Renunciation does not explicitly

admit or adopt any part of the conciliation award, it shall be deemed, upon delivery, to constitute a renunciation of the award in its entirety.

CONFIDENTIALITY

Article 13

The mediative conciliator and the parties must keep confidential all matters relating to the mediative conciliation proceedings. Confidentiality extends also to the settlement agreement and conciliation award, except where its disclosure is necessary for purposes of implementation and enforcement.

TERMINATION OF MEDIATIVE CONCILIATION PROCEEDINGS

Article 14

- 1) The mediative conciliation proceedings are terminated:
 - a) by the signing of the settlement agreement, which is enforceable as an arbitral award, by the parties; or
 - b) by a formal conciliation award made by the mediative conciliator.
- 2) The mandate of the mediative conciliator shall cease upon termination of the mediative conciliation proceedings.

RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

Article 15

By taking any step that sets the mediative conciliation in motion, the parties are deemed to undertake not to initiate, during the pendency of the mediative conciliation, any arbitral or judicial proceedings in respect of any dispute that is the subject of the mediative conciliation until the mediative conciliation proceedings are terminated.

COSTS

Article 16

- 1) At any stage after commencement of the mediative conciliation proceedings, the mediative conciliator may fix the cost of the mediative conciliation and give written notice thereof to the parties.
- 2) The term "costs" includes only:
 - a) the fee of the mediative conciliator, which shall be a reasonable amount;

- b) the travel and other expenses of the mediative conciliator;
 - c) the travel and other expenses of witnesses requested by the mediative conciliator with the consent of the parties;
 - d) the cost of any assistance provided under the Rules.
-
- 3) The costs, as defined above, are borne equally by the parties unless the Mediative Conciliation Agreement provides for a different appointment. All other expenses incurred by a party are borne by the party.
 - 4) The mediative conciliator, upon his appointment, may request each party to deposit an equal amount as an advance for the cost referred to in Article 16, paragraph (1) which he expects would be incurred.
 - 5) In the course of the mediative conciliation, the mediative conciliator may request supplementary deposits, in an equal amount from each party.
 - 6) If the required deposits under paragraphs (4) and (5) of this Article are not paid in full by both parties within thirty days, the mediative conciliator may suspend the proceedings or may make a written declaration of termination to the parties.
 - 7) Upon termination of the mediative conciliation proceedings, the mediative conciliator shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

ROLE OF MEDIATIVE CONCILIATOR IN OTHER PROCEEDINGS

Article 17

The mediative conciliator shall not act as an arbitrator or as a representative, counsel or witness to any of the parties to the mediative conciliation in any arbitration or judicial proceedings in respect of any dispute that is the subject of the mediative conciliation.

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

Article 18

By taking any step that sets the mediative conciliation in motion, the parties are deemed to undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or

not such proceedings relate to the dispute that is the subject of the mediative conciliation proceedings:

- a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- b) admissions made by the other party in the course of the mediative conciliation proceedings;
- c) proposals made by the mediative conciliator;
- d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the mediative conciliator.

INTERPRETATION

Article 19

In these Rules, unless the context otherwise requires, "he", "him" or "his", when used in relation to a party means the party under reference, whether the party is a male, a female or an artificial person; and when used in relation to a mediative conciliator means the mediative conciliator, whether the mediative conciliator is a male or a female.

"party" means a party to the mediative conciliation or any person claiming through or under him and "parties" shall be construed accordingly.

"the Institute" means the Institute of Construction Industry Arbitrators.

"the President" means the President of the Institute of Construction Industry Arbitrators.

"the Rules" or "these Rules" means the Institute of Construction Industry Arbitrators Mediative Conciliation Rules, 2025.

CITATION

Article 20

These Rules may be cited as "Institute of Construction Industry Arbitrators Mediative- Conciliation Rules, 2025".

COMMENCEMENT

Article 21

These Rules shall come into effect on the day of , 2025

APPENDIX MEDIATIVE CONCILIATION AGREEMENT

Date: _____

Parties:

_____ ("Party A")

_____ ("Party B")

_____ ("Party C") etc.]

(jointly "the parties")

Add full names and address

_____ ("the Mediative Conciliator")

_____ ("the Co-Mediative Conciliator")

(and/or any adviser to the Mediative Conciliator) (jointly
and individually "the Mediative Conciliator")

Venue: _____

Dispute ("the Dispute")

Attach brief description of the Dispute

1. **Participation in the Mediation**

The parties will attempt to settle the Dispute by mediation ("the Mediation"). The MTI Mediation Procedure Rules [as varied by this agreement] will determine the conduct of the Mediation and is incorporated into, and forms part of this agreement.

2. **The Mediative Conciliator**

The Mediative Conciliator(s) will be _____

The Co-Mediative Conciliator will be _____

3. **The Lead Negotiators**

The Lead Negotiator(s) for each of the Parties at the Mediative Conciliation will be

Party A: _____

Party B: _____

Party C: etc. _____

(jointly "the Lead Negotiators")

(Add full names and corporate titles)

Each of the Lead Negotiators will have full authority to settle on behalf of its Party.

A party will immediately notify the other Party(ies), and the Mediative Conciliator of any change to the above.

4. The person signing the Mediative Conciliation Agreement on behalf of each Party, will be deemed to be agreeing, on behalf of both the Party he/she represents and all persons present on that

Party's behalf.

5. Other Participants

The following, in addition to the Lead Negotiators, will be present on behalf of each of the parties at the Mediative Conciliation:

Party A: _____

Party B: _____

Party C: etc. _____

A Party will immediately notify the other Party(ies) and the Mediative Conciliator of any change(s) to the above.

6. Place and time The Mediative Conciliation will take place

at: _____ on: _____

7. Confidentiality

The person signing this agreement on behalf of each party is deemed to be agreeing to the confidentiality provisions of the Model Procedure on behalf of the party he/she represents and all other persons present on that Party's behalf at the Mediative Conciliation.

8. Effect on litigation or arbitration

No litigation or arbitration in relation to the Dispute is to be commenced (any existing litigation or arbitration in relation to the Dispute is to be stayed) from the date of this agreement until the termination of the Mediative Conciliation.

9. Law and Jurisdiction

This agreement shall be governed by, construed and take effect in accordance with the Laws of the Federal Republic of Nigeria. The High Courts of Nigeria shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the mediative conciliation.

10. Conciliation

- a. The parties agree that if the dispute is not settled by Mediation, the Mediative Conciliator reserves the right to decide how best to resolve the dispute and the parties shall be bound by the decision of the Mediative Conciliator.
- b. A party's refusal to attend an adjourned session is deemed to have 'failed to resolve through **the mediation**' and will consequently await, receive and be bound by the decision of the Mediative Conciliator.

11. Cost

The parties agree to pay the sum of ----- (amount in words) for the resolution of the dispute if it ends in *the Mediation*. However, they shall pay an additional ----- (amount in words) if it ends in Conciliation. The cost(s) will be shared equally by the parties.

Signed (Name, Signature and Date):

On behalf of Party A _____

On behalf of Party B _____

The Lead Mediative Conciliator _____

On behalf of ICIARB _____





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CONTACT US:

5 SIMPSON STREET, 1ST FLOOR (SHOBO HOUSE)
NEAR HIGH COURT OF LAGOS STATE, LAGOS ISLAND,
LAGOS NIGERIA.

Tel: 0706 682 5138, 0701 982 8109

E-mail: info@iciarbitrators.org,
constructionarbitrator@gmail.com

Website: www.iciarbitrators.org

