



EXPEDITED MEDIATION GUIDELINES

Of the

Lagos Court of Arbitration

LCA EXPEDITED MEDIATION GUIDELINES 2018



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Preamble

In recognition of the need to have a set of guidelines to govern mediation at the Lagos Court of Arbitration, of cases referred from the Courts of the Federal Republic of Nigeria, these Guidelines were passed on the 2nd day of May 2018 to assist in the effective resolution of disputes by mediation and for the proper and expeditious conduct of mediation proceedings and other connected purposes.

Article 1

Title and Definitions

- 1.1** These Guidelines shall be Known as the “ Expedited Mediation Guidelines of the Lagos Court of Arbitration, 2018”; hereinafter called the ‘LCA Expedited Mediation Guidelines 2018’.
- 1.2** In order to preserve the flexibility of the mediation process, the LCA Expedited Mediation Guidelines shall not be unduly prescriptive; they should be construed and interpreted in a liberal manner to produce a just, efficient, expeditious and cost-effective process of resolving disputes by mediation between parties.
- 1.3** In these Mediation Guidelines:
- i. “Executive Secretary” means the Executive Secretary of the Lagos Court of Arbitration.
 - ii. “LCA” means the Lagos Court of Arbitration.
 - iii. “List of Mediators” means the names of any person screened and appointed to provide mediation services through a process established by the LCA as contained on the Panel of Neutrals of the LCA, .

- iv. “Mediator” means a person whose name is on the Lagos Court of Arbitration’s Panel of Neutrals and who is suitably qualified and experienced in mediation and who has been appointed in accordance with Article 4 of these guidelines to act as a mediator. The term includes a sole mediator or a panel made up of two or more mediators.
- v. “Submission Agreement” means a written agreement wherein parties have agreed to submit all or certain disputes which have arisen or which may arise between them, to mediation. A Submission Agreement may be in the form of a mediation clause in a contract or in the form a separate agreement between the parties.
- vi. “Mediation/Arbitration Submission Agreement” means a written agreement wherein parties have agreed to submit all or certain disputes which have arisen or which may arise between them, to mediation and in the event of a failure to settle to arbitration. A mediation/arbitration submission agreement may be in the form of a clause in a contract or in the form a separate agreement between the parties.
- vii. “Settlement Agreement” means the agreement reached between the parties at the successful conclusion of the mediation and the expression includes any Heads of Agreement signed by the parties pending the preparation and execution of a properly drawn-up agreement evidencing full details of the agreement reached by the parties during the mediation.

Article 2

Scope of Application

2.1 The LCA Expedited Mediation Guidelines will apply:

a) to the mediation of present or future disputes where parties seek amicable settlement of the disputes, and where either by stipulation in the contract entered into between them or by subsequent agreement, the parties have agreed that the LCA Expedited Mediation Guidelines shall apply.

b) Where the judge in a matter instituted in any court of the Federal Republic of Nigeria refer parties to the LCA for a speedy resolution of the dispute.

c) Where there is no prior agreement to mediate any dispute between the parties but one of the parties in dispute has requested the LCA to secure the participation of the other party (ies) to resolve the dispute speedily by mediation and the other party has agreed.

2.2 Where a Submission Agreement or a Med/Arb Submission Agreement provides for mediation under the LCA Expedited Mediation Guidelines, the Guidelines shall be deemed to form an integral part of the Submission Agreement and unless the parties agree otherwise, the version of the LCA Expedited Mediation Guidelines in force on the date when the written request for mediation is filed, shall apply.

2.3 The parties may, with the consent of the LCA and the mediator, agree to apply other rules of procedure or to vary these Guidelines at any time to suit the circumstances of the case.

Article 3

Commencement

3.1 Where any court of the Federal Republic of Nigeria refer a matter to the LCA for mediation or med/arb, the Executive Secretary shall receive the case file and ensure that a copy of the Submission Agreement is in the file. The file shall contain the identity of the parties, the names and contact details of their representatives and a brief description of the matter in dispute.

3.2 Where the parties jointly agree to settle the dispute under the LCA Expedited Mediation Guidelines, they shall send a written request for mediation to the Executive Secretary, which shall contain the identity of the parties, the names and contact details of their representatives where relevant and a brief description of the matter in dispute.

3.3 If the request for mediation is made by only one of the parties to a prior agreement to settle any dispute in accordance with the LCA Expedited Mediation Guidelines, that party shall, at the same time that it is filing its request for mediation, send a copy of the request for mediation to the other party.

3.4 Where there is no prior agreement between the parties to resolve any dispute by mediation under the LCA Expedited Mediation Guidelines, either party to the dispute shall send a written request for mediation to the Executive Secretary and the LCA shall use its best endeavor to ensure the participation of the other party or parties in the mediation process. Where the other party or parties fail to agree to mediation within a reasonable time of being approached by the LCA, the Executive Secretary shall in writing, inform the party who has sent the request for mediation, of the refusal and state that there shall be no mediation under the LCA Mediation Guidelines.

3.5 All requests for mediation shall be accompanied by a non-refundable registration fee prescribed by the LCA from time to time.

3.6 The day the request for mediation is received by the Executive Secretary shall be regarded as the date of commencement of the mediation.

3.7 The Executive Secretary shall immediately inform the parties of the date on which the mediation commences, and the time limit by which the other party shall pay its share of the fees payable at that time pursuant to Article 3 of these Guidelines.

Article 4

Appointment of Mediator

4.1 Upon the receipt of the request for mediation and payment of the non-refundable registration fee, the Executive Secretary shall invite the President of the LCA to appoint the mediator in accordance with these Guidelines.

4.2 The President of the LCA shall appoint the mediator, subject to the parties' objection on grounds of conflict of interest within 5 days of receiving the request from the Executive Secretary.

4.3 The Executive Secretary shall immediately communicate the appointment of the mediator to the parties.

Article 5

Disclosure

5.1 Before accepting to act, a mediator shall complete the Disclosure Form contained in Appendix 2 attached hereto.

5.2 The mediator shall undertake to be bound by the LCA Code of Ethics for Neutrals and throughout the mediation process, the mediator shall be impartial, remain independent of the parties and shall disclose to the Executive Secretary any circumstances likely to compromise or raise

justifiable doubts as to his or her impartiality or independence with regard to any of the parties.

5.3 Upon receipt of any information disclosed, the Executive Secretary shall immediately communicate the information to the parties and request for their reaction hereto.

5.4 If the disclosure is made before the mediation sessions commence, any party may raise an objection to the appointment of the proposed mediator who has made the disclosure, within 3 (three) days of being given the disclosed information (or in exceptional cases, a maximum of 10 (days), and that mediator shall not be appointed.

5.5 If the disclosure is made after the commencement of the mediation sessions but before they are concluded, the parties may authorize the mediator to continue with his or her mandate by means of a signed separate or joint declaration of parties.

Article 6

Replacement of Mediator

In the event of any objection by any if the parties, or in his or her own discretion a mediator resigns or deems him or herself unable to conclude the mediation, the mediator shall cease the mandate and inform the Executive Secretary, who will arrange for the replacement of the mediator in the same manner as the appointment of the mediator to be replaced. .

Article 7

Pre-Mediation Meeting

7.1 The Executive Secretary shall facilitate the holding of a pre-mediation meeting between the parties and the mediator in order to make necessary arrangements for the mediation proceedings.

7.2 The parties shall be required to attend the pre-mediation meeting with a copy each of their case summaries and key documents for the other party(s), the mediator and the Executive Secretary.

7.3 Matters to be dealt with at the pre-mediation meeting shall include the exchange of case summaries and key documents between the parties and the mediator through the Executive Secretary; the date, venue and time for the commencement of the mediation and the names, contact details and roles of the persons attending the mediation. Provided that nothing herein shall prevent the pre-mediation meeting from being held by correspondence, telecommunications or any other means agreed between the parties and the mediator and communicated to the Executive Secretary.

7.4 The discussions held at the pre-mediation meeting shall be confidential.

7.5 The pre-mediation meeting shall be held within 5 (five) days of the appointment of the Mediator or such other day as agreed by the parties and the mediator.

Article 8

The Mediation Agreement

After the pre-mediation meeting has been held, the Executive Secretary shall ensure that the parties and the mediator enter into an LCA Mediation Agreement or an LCA Med/Arb Agreement in the form contained in

Appendix 1 attached hereto with such modifications as are agreed between the parties and the mediator, with the approval of the Executive Secretary.

Article 9

Conduct of the Mediation

9.1 The 1st mediation session shall take place within 5 (five) days after the pre-mediation meeting or such day as agreed between the parties and the mediator.

9.2 The mediator will conduct the mediation with due care and skill and in such manner as he or she considers appropriate, having due regard to the nature and circumstances of the dispute as well as the need for its efficient and expeditious resolution. The procedure will usually consist of joint as well as private meetings as proposed by the mediator and these may be held with such of the parties as may be determined by the mediator and agreed by the parties.

9.3 Unless the parties agree otherwise, the mediator shall prescribe no more than 3 (three) mediation sessions for the settlement of the dispute.

9.4 The LCA shall provide the venue to be used for the mediation proceedings

9.5 Any document relied upon by a party and delivered to the mediator confidentially shall not be disclosed to the other party unless with the express agreement of the party relying on the document.

Article 10

Representation of Parties

10.1 Parties shall be represented at any sitting for the mediation either personally or by proxy, through their counsel or the lawful holders of their power of attorney.

10.2 Each party may also appoint one or more other persons including legally qualified persons to assist and advise them in the mediation and to perform such roles in the mediation as the parties may require.

10.3 Where a party is represented at the mediation by proxy or holder of a lawful power of attorney or a party is a corporate body, organization or government agency, ministry or other non-natural persons, that party's representative(s) must be given full authority to settle the dispute and sign the Settlement Agreement on its behalf.

10.4 In circumstances where it is not possible for the party's representative to be given full authority to settle; such as the need for ministerial approval or board ratification, the party's representatives must be able to communicate during the mediation with the person(s) with the power to take a final decision or be given the power to recommend acceptance of any settlement reached.

Article 11

Role of the Mediator

11.1 The mediator shall:

(a) Accept the appointment only if he or she is able to devote sufficient time to the mediation to ensure its expeditious conduct;

(b) Read the case summaries and documents submitted by the parties and be well prepared for the mediation proceedings;

(c) Assist the parties to identify the issues in dispute, facilitate communication between the parties and explore possible options for settlement. The mediator shall not make decisions on behalf of the parties or impose any solution on them.

11.2 Unless the parties agree otherwise, the mediator shall not obtain advice or opinions with regard to any aspect of the dispute from any person who is not a party to the dispute.

Article 12

Role of the Parties

12.1 The parties shall endeavour to act in good faith in the mediation and cooperate with the Mediator and each other.

12.2 The parties shall give the mediator freedom to execute his or her mandate so that the mediation can be concluded as expeditiously and as successfully as possible.

12.3 As mediation sessions may go on until after normal working hours, each party shall inform the Executive Secretary, the mediator and the other party of any time constraints, so that appropriate arrangements may be made.

Article 13

Language of the Mediation

Where necessary, the parties shall agree to the language in which the mediation will be held and in default of their agreement, the mediator shall determine the language for the mediation provided that adequate arrangement are made for interpreters, if deemed necessary.

Article 14

Confidentiality

14.1 The mediation proceedings are confidential and every person involved in the mediation shall keep confidential and not use for any collateral or ulterior purpose, all information (whether given orally, in writing or otherwise), produced for, or arising out of or in relation to the mediation.

14.2 Except as provided in these LCA Expedited Mediation Guidelines, all documents, which include anything upon which evidence is recorded (including tapes and computer discs), or other information produced for and arising out of or in relation to the mediation will be privileged and shall not be admissible as evidence, or discoverable in any administrative proceedings, litigation or arbitration connected with the dispute or any dispute arising out of or in connection with the mediation.

14.3 Provided that the provisions of Article 14.1 and 2 above shall not apply to information or documents which would in any event have been admissible or discoverable in any administrative proceedings, litigation or arbitration, or which is necessary to implement and enforce any Settlement Agreement entered into to the successful conclusion of the mediation, or to comply with any order of court in any subsequent action.

14.4 No recording or transcription of any kind shall be made of any meetings of the parties with the Mediator and/or mediation sessions.

14.5 None of the parties shall call the mediator as witness, consultant or expert in any litigation or arbitration in relation to the dispute or any dispute arising out of or in connection with the mediation and the Mediator will not voluntarily act in any such capacity without the prior written agreement of all the parties.

14.6 The parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or to testify in any current or future proceedings as to information disclosed or representations made in the

course of mediation. In the event that any party causes the mediator to be served with a subpoena or other process in violation of this clause, such participant shall pay the mediator's costs, expenses and fees; including attorney's fees, relating to the violation.

Article 15

Conclusion of the Mediation

15.1 The Mediation may end by:

(a) The parties settling the disputes in whole or in part and signing a Settlement Agreement;

(b) Either party giving written notice of withdrawal to the Executive Secretary and the other party at any time before the signing of any Settlement Agreement;

(c) A written declaration by the mediator to the Executive Secretary and the parties that he or she is unable to proceed with the mediation for reasons disclosed therein which might include the fact that further efforts at mediation will not achieve the resolution of the dispute, provided that the parties should be given the opportunity to return to the mediation process if they so wish, upon payment of additional fees as determined by the LCA.

Article 16

Settlement and Enforcement

16.1 In the event that any part of or the whole dispute is settled by mediation, the terms of the settlement shall be written down and signed by the parties or their representatives and the Mediator. If any counsel has

represented the parties, they shall attest the signature of their respective clients.

16.2 Unless the parties agree otherwise, the terms of settlement reached at the end of the mediation may be entered as a consent award in an arbitration or consent judgment and enforceable as any award of an arbitral tribunal or judgment of a court, or it may be enforceable as a contract.

16.3 Unless otherwise agreed by the parties, any agreement resulting from the mediation may be introduced in evidence in any subsequent proceedings to enforce the terms of the Settlement Agreement.

Article 17

Failure to Settle

17.1 Where the parties are unable to settle the dispute whilst the mediation process lasts, the mediator will encourage the parties to continue to communicate and seek ways of resolving the dispute.

17.2 Where the parties have signed a mediation/arbitration submission agreement, the mediator shall assume the role of an arbitrator immediately and the LCA Expedited Med/Arb Rules shall take effect. Provided that if one or both parties are not agreed that the mediator assume the role of arbitrator, the President of the LCA shall appoint an arbitrator within 5 (five) days of being notified of the party(ies) objections.

Article 18

Exclusion of Liability

The parties jointly and severally release, discharge and indemnify the staff and officials of the LCA and the mediator in respect of any liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or in relation in any way to any mediation proceedings conducted by the LCA, save for the consequences of fraud or dishonesty.

Article 19

Costs

19.1 The costs of the mediation (other than the legal or other costs incurred by the parties themselves) shall be N200, 000. 00 (Two Hundred Thousand Naira Only) or such other fee as may be prescribed by the LCA from time to time.

19.2 Each party shall pay the fees fixed by the LCA within the time limit prescribed by the Executive Secretary.

19.3 Unless otherwise agreed between the parties, the costs of the mediation, which shall include the LCA fees and the fees of the mediator, will be borne by the parties in equal share or in such proportion as agreed by the parties. The Executive Secretary will inform the parties in writing how much is due to be paid by each party.

19.4 The LCA may require the parties to deposit an equal amount as an advance payment towards the costs of the mediation.

Article 20

General Provision

20:1 The text of these Guidelines is in the official language of the Lagos Court of Arbitration and any other language that it is translated into shall be equally authentic.

20:2 These Guidelines may be cited as the Lagos Court of Arbitration Expedited Mediation Guidelines, 2018.



CHARLES ADEYEMI CANDIDE-JOHNSON, SAN, FCIArb
PRESIDENT

Appendix 1

LCA MEDIATION AGREEMENT

[This Form may be amended by the LCA from time to time]

This **MEDIATION AGREEMENT** is made the.....day of.....
, 20.....

BETWEEN

Party A (Claimant/ Applicant) (full names, description and address)

Party B (Respondent) (full names, description and address)

(hereinafter collectively called 'the Parties')

AND

Mediator (full name, description and address)

(hereinafter referred to as 'the Mediator').

WHEREAS:

Brief recital of:

- i. The relationship between the parties, whether business or otherwise;
- ii. The dispute;
- iii. Court or other proceedings and stay of such proceedings

Participation in the Mediation

The parties hereby agree to submit the above referred dispute(s) to mediation and the mediator has agreed to act as mediator in the mediation.

Representation of the Parties

1. The parties shall be represented at the mediation as follows:

Claimant:

Respondent:

2. The parties agree to immediately notify the mediator and the other party of any changes to the above
3. The parties agree to at in good faith in the mediation, cooperate with the mediator towards achieving a mutually satisfactory agreement.

Undertaking

The Mediator:

- i. Undertakes to conduct the mediation with due diligence in accordance with the LCA Expedited Mediation Guidelines or such other rules as agreed by the parties and the mediator with the approval of the Executive Secretary of the LCA provided that the mediator may withdraw from the mediation upon notice to the participants', if in his or her opinion the mediation cannot successfully resolve the dispute between the parties;
- ii. Shall act as an impartial intermediary and will not act as an advocate for any party.

Indemnity

The parties jointly and severally release, discharge and indemnify the mediator in respect of any liability whatsoever, whether involving negligence or not and from any act or omission in connection with or arising out of or in relation in any way to the mediation, save for the consequences of fraud or dishonesty.

Venue, Date and Time

The Mediation will take place at.....on theday ofato' clock and if resolution is not achieved on this day, subsequent mediations may be scheduled with the agreement of all parties.

Confidentiality

The mediation process is confidential and all parties to this agreement agree to be bound by the confidentiality rules contained in the LCA Expedited Mediation Guidelines.

Cost of the Mediation

The parties shall jointly and severally be liable for the cost of the mediation and parties shall bear their own costs arising out of and/ or associated with the mediation proceedings, regardless of the outcome of the mediation.

Representation

Each of the parties warrants that an authorized company representative of the signing party signs this Agreement on its behalf.

Signed by the parties:

(Full names of party or representative)

-----20-----

(Full names of party or representative)

-----20-----

(Full names of party or representative)

-----20-----

(Full names of Mediator)

-----20-----

Appendix 2

[This Form may be amended by the LCA from time to time]

LCA DISCLOSURE FORM AND STATEMENT OF INDEPENDENCE

CASE NO:

IN THE MATTER OF A MEDIATION

BETWEEN (APPLICANT) and (RESPONDENT)

1. I hereby state that I have/do not have any past or present , direct or indirect relationship with any of the parties , whether financial or professional or any other relationship or any circumstances which may prejudice my duty to assist the parties to resolve the dispute in a fair, just, independent and impartial manner.
2. If any such relationship or circumstance develops or comes to my knowledge during the course of the mediation, I will also be disclosed to the parties and the Executive Secretary of the Lagos Court of Arbitration.
3. Any doubt that I may have in regard to my duty to disclose any fact will be resolved I favour of disclosure.

4. I acknowledge the duty of the Executive Secretary of the Lagos Court of Arbitration to bring all facts disclosed to the attention of the parties.

I HAVE NOTHING TO DISCLOSE

I am independent and will remain so. I declare that to the best of my knowledge, there are no facts or circumstances, whether past or present, that I am withholding and which might bring my independence or impartiality into question before the parties.

I HEREBY DISCLOSE THE FOLLOWING

I am independent and intend to remain so. I however wish to draw the attention of the parties and Lagos Court of Arbitration to the following

Dated this day of20.....

(Name & Signature of Mediator)

