



RCICAL

ARBITRATION RULES

Effective 1 July 2008

**REGIONAL CENTRE FOR
INTERNATIONAL
COMMERCIAL ARBITRATION-LAGOS**

(Established under the Auspices of the Asian-African Legal Consultative Organization)



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Forward

The Rules for Arbitration of the Regional Centre for International Commercial Arbitration (The Lagos Centre) were first drafted in 1999 and are adopted from the UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) Arbitration Rules which were in themselves adopted by the UN General Assembly in 1976.

The revised Centre Rules take effect from 1st July 2008 for arbitrations held on/or after that date. Such modifications as are necessary have been introduced to add institutional features to an otherwise body of ad-hoc Rules, widely drawn to satisfy diverse jurisdictions and cultures across the globe.

Reference to the Model Arbitration Clauses for both future disputes (Clause Compromisoire) and existing disputes (Compromise) have been made in the footnotes to the Rules.

Worthy of note also, is the provision in the Rules for appointment of experienced international arbitrators from the Centre's international panel of arbitrators where the need arises in circumstances where the parties have failed or are unable to nominate arbitrators themselves-and the Rules require the Centre to make such appointments.

I should point out also that the Centre would administer International Arbitration under other Arbitration Rules; for example, the UNCITRAL-RULES.

It is our hope that parties to arbitrations would find it expedient to utilize these Rules, while we sincerely thank all who contributed towards its revision; especially key contacts in the United Kingdom.

Eunice R. Oddiri

Director of Centre.

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RULES FOR ARBITRATION

Section I. Introductory Rules

SCOPE OF APPLICATION

Article 1

1.1(a) Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the Arbitration Rules of the Regional Centre for International Commercial Arbitration-Lagos ("the Rules" and "the Centre", respectively), then such disputes shall be settled in accordance with the Rules (or such amended Rules as the Centre may have adopted hereafter to take effect at the commencement of the arbitration), but subject to such modification as the parties may agree in writing.

1.1(b) The Rules include the Table of Registration Fees and Administrative Charges of the Centre, and the Table of Arbitrators' Fees, in effect at the commencement of the arbitration.

1.2 The Rules shall govern the arbitration except that, where any of the Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, such provision shall prevail.

ASSISTANCE BY THE CENTRE

Article 2

2.1 The Director of the Centre shall make available such facilities and assistance for the conduct of arbitration proceedings as may be required. Such facilities may include the provision of suitable accommodation for sittings of the Arbitral Tribunal, Secretarial assistance and interpretation services.

2.2 The Centre shall maintain a Panel of International Arbitrators ("the International Panel").

Model Clauses

(1) Future Disputes

*Where parties to a contract wish to have future disputes referred to arbitration under the Arbitration Rules of the Regional Centre for International Commercial Arbitration-Lagos, the following clause is recommended:-
The words, spaces, in square brackets should be deleted/completed as necessary:*

COMMUNICATIONS

Article 3

- 3.1 Until the Arbitral Tribunal is formed, all communications between the parties shall be through the Centre.
- 3.2 Thereafter except where the Arbitral Tribunal directs or orders that communications take place directly between the parties and the Arbitral Tribunal (with simultaneously copies given to the Centre), all written communications between the parties and the Arbitral Tribunal shall continue to be made through the Centre.
- 3.3 Where the Centre sends any written communication to one party on behalf of the Arbitral Tribunal, the Centre shall send a copy to each of the other parties.
- 3.4 Any party that sends any communication to the Centre (including written statements and Documents under Articles 18 – 20 and 22), shall include a copy for each Arbitrator and shall confirm to the Centre in writing that it has sent or issued copies directly to all other parties.

CONFIDENTIALITY

Article 4

- 4.1 Unless expressly agreed in writing to the contrary, the parties to an arbitration under the Rules, their counsel, experts, and members of the Centre's staff, undertake to keep confidential all awards in the arbitration, together with all materials in the proceedings created for the purpose of the arbitration, and all other documents produced by any party in the proceedings which are not otherwise in the public domain; save where disclosure may be required of any party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a State court or other judicial authority.
- 4.2 The deliberations of the Arbitral Tribunal are likewise confidential to its members.
- 4.3 The Centre shall not publish any Award or any part of an Award without the prior written consent of all parties and the Arbitral Tribunal.

"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Regional Centre for International Commercial Arbitration-Lagos, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be [one or three].

The place of arbitration shall be [City and or Country].

The language to be used in the arbitral

NOTICE AND CALCULATION OF PERIODS OF TIME

Article 5

- 5.1 For the purposes of the Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 5.2 For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

NOTICE OF ARBITRATION

Article 6

- 6.1 The party wishing to initiate arbitration under the Rules ("the Claimant") shall deliver to the other party "(the Respondent)" Notice of Arbitration.
- 6.2 Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the Respondent.
- 6.3 The Notice of Arbitration shall include the following:
- (a) A demand that the dispute be referred to arbitration;
 - (b) The names and addresses of the parties; may also include their telephone, fax numbers and email addresses;
 - (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;

*proceedings shall be [].
The governing law of the contract shall be
the substantive law of []."*

(2) **Existing Disputes**

Where a dispute has already arisen, but there is no agreement between the parties to arbitrate, or if the parties wish to vary a dispute resolution clause so as to provide for arbitration under the Rules of the Regional Centre for

- (d) A copy of the contract or the document out of or in relation to which the dispute arises;
- (e) The general nature of the claim and an indication of the amount involved, if any;
- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators (namely one or three), if the parties have not previously agreed thereon.

6.4 The Notice of Arbitration may also include:

- (a) The proposals for the appointment of a sole arbitrator referred to in Article 9;
- (b) The notification of the appointment of an arbitrator referred to in Article 10;
- (c) The Statement of Claim referred to in Article 21.

6.5 A Request for Arbitration shall be submitted to the Centre by the Claimant with as many copies as there are other parties "(Respondents)", together with copies for the Tribunal, and such Request shall include the prescribed registration fee.

REPRESENTATION AND ASSISTANCE

Article 7

7.1 The parties may be represented or assisted by legal practitioners or any other persons of their choice. The names and addresses of such persons must be communicated in writing to the Centre and to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

7.2 At any time, any party may request the Arbitral Tribunal in writing to require from its representative(s) proof of authority to continue in its representation of that party.

International Commercial Arbitration-Lagos, the following clause is recommended:

Words, spaces, in square brackets should be deleted/completed as necessary.

"A dispute having arisen between the parties concerning [insert the nature of the dispute], the parties hereby agree that the dispute shall be referred to and finally resolved by arbitration under the Rules of the Regional Centre for International Commercial Arbitration-Lagos.

The number of arbitrators shall be [one or three].

The place of arbitration shall be [City and or Country].

Section II. Composition of the arbitral tribunal

NUMBER OF ARBITRATORS AND EXPEDITED FORMATION

Article 8

- 8.1 If the parties have not previously agreed on the number of arbitrators (namely either one or three), and if within fifteen days after the receipt by the Respondent of the Request for Arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.
- 8.2. Where the parties to the dispute number more than two and such parties have not all agreed in writing that such parties shall represent two separate sides for the formation of the Arbitral Tribunal as Claimant and Respondent respectively, the Centre shall appoint the Arbitral Tribunal from its International Panel without regard to any party's nomination, the Arbitration Agreement in such circumstances being treated for all purposes as a written agreement by the parties for the appointment of the Arbitral Tribunal by the Centre.
- 8.3 In exceptional urgency, on or after the commencement of the arbitration, any party may apply to the Centre for the expedited formation of the Arbitral Tribunal, including the appointment of any replacement arbitrator under Article 16 of the Rules.
- 8.4 Such an application shall be made in writing to the Centre and copied to all other parties to the arbitration. The application shall set out the specific grounds for exceptional urgency in the formation of the Arbitral Tribunal.

APPOINTMENT OF ARBITRATORS (Article 9 to 11)

Article 9

- 9.1 Unless otherwise agreed in writing by the parties, the procedure for the appointment of a sole arbitrator shall be as follows, namely, either party may propose to the other:
- (a) The names of one or more persons, one of whom would serve as the sole arbitrator, and
 - (b) If within thirty days after receipt by a party of such proposal the parties have not reached agreement on the choice of a sole arbitrator, or if no such proposal is made within that time, the sole arbitrator shall be appointed by the Centre.

The language to be used in the arbitral proceedings shall be []. The governing law of the contract [is/shall be] the substantive law of []."

- 9.2 In making any such appointment, the Centre shall use the following list-procedure, unless both parties agree that the list-procedure, should not be used or unless the Centre determines in its discretion that the use of the list-procedure is not appropriate for the case:
- (a) At the request of one of the parties, the Centre shall communicate to both parties an identical list containing at least three names.
 - (b) Within fifteen days after the receipt of this list, each party may return the list to the Centre after having deleted the name or names to which they object and numbered the remaining names on the list in the order of his preference.
 - (c) After the expiration of the above period of time, the Centre shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties.
 - (d) If for any reason the appointment cannot be made according to this procedure, the Centre may exercise its discretion in appointing the sole arbitrator.
- 9.3 In making the appointment, the Centre shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Article 10

- 10.1 Unless otherwise agreed in writing by the parties, the procedure for the appointment of three arbitrators shall be as follows:
- (a) Each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the Tribunal;
 - (b) If within thirty days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request the Centre to appoint the second arbitrator. The Centre shall make such appointment, taking into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties;
 - (c) If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Centre in the same way as a sole arbitrator would be appointed under Article 9.

Article 11

- 11.1 Where the parties have agreed that any arbitrator is to be appointed by any third person as a named appointing authority, that agreement shall be treated as an agreement to nominate an arbitrator. The Centre may refuse to appoint any such nominee if it determines that such nominee is not suitable or independent or impartial in which event the Centre shall make an alternative appointment.
- 11.2 Where the parties have agreed that any arbitrator is to be appointed by any third person as an appointing authority, but the name of such appointing authority is not specified, that agreement shall be treated as an agreement that the Centre shall act as appointing authority.
- 11.3 The provisions of Articles 9 and 10 dealing with the appointment of one or more arbitrators shall apply as necessary to the provisions of this Article.
- 11.4 To the extent that it considers it necessary in any particular case, the Centre may have regard to the provisions of Articles 6 to 8 of the UNCITRAL Arbitration Rules in relation to appointing authorities.

CHALLENGE OF ARBITRATORS (Articles 12 to 15)

Article 12

- 12.1 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.
- 12.2 No arbitrator shall act in the arbitration as advocates for any party. No arbitrator, whether before or after appointment, shall advise any party on the merits or outcome of the dispute.

Article 13

- 13.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 13.2 A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 14

- 14.1 A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in Articles 12 and 13 became known to that party.
- 14.2 The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the Arbitral Tribunal and to the Centre. The notification shall be in writing and shall state the reasons for the challenge.
- 14.3 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in the preceding Articles shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 15

- 15.1 If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Centre or, where the initial appointment was made by an appointing authority, by that authority.
- 15.2 If the Centre or the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided for in the preceding Articles.

REPLACEMENT OF AN ARBITRATOR

Article 16

- 16.1 In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in the preceding Articles that was applicable to the appointment or choice of the arbitrator being replaced.
- 16.2 In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Articles shall apply.

REPETITION OF HEARINGS IN THE EVENT OF THE REPLACEMENT OF AN ARBITRATOR

Article 17

If under the preceding Articles the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the Arbitral Tribunal.

Section III. Arbitral proceedings

GENERAL PROVISIONS

Article 18

- 18.1 Subject to the Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
- 18.2 At an early stage of the arbitration proceedings and in consultation with the parties, the Arbitral Tribunal shall prepare a provisional timetable for the arbitration proceedings, which timetable shall be provided to the parties and to the Centre.
- 18.3 If either party so requests at any stage of the proceedings, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument; in the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 18.4 All documents or information supplied to the Arbitral Tribunal by one party shall at the same time be communicated by that party to the other party and to the Centre.

PLACE OF ARBITRATION

Article 19

- 19.1 Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be Lagos, or such other place as may be determined by the Arbitral Tribunal, having regard to the circumstances of the arbitration.
- 19.2 Subject to the provisions of Article 19.1, the Arbitral Tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

19.3 The Arbitral Tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

19.4 The Award shall be deemed to have been made at the place of arbitration.

LANGUAGE

Article 20

20.1 Subject to any agreement by the parties, the Arbitral Tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim, the Statement of Defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

20.2 The Arbitral Tribunal may order that any documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the Arbitral Tribunal.

STATEMENT OF CLAIM

Article 21

21.1 Unless the Statement of Claim was contained in the Request for Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Claimant shall communicate his Statement of Claim in writing to the Respondent, to each of the arbitrators, and to the Centre. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

21.2 The Statement of Claim shall include the following particulars:

- (a) The names and addresses of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought.

21.3 The Claimant may annex to the Statement of Claim all documents deemed relevant or may add a reference to the documents or other evidence to be submitted.

STATEMENT OF DEFENCE

Article 22

- 22.1 Within a period of time to be determined by the Arbitral Tribunal, the Respondent shall communicate a Statement of Defence in writing to the Claimant, to each of the arbitrators, and to the Centre.
- 22.2 The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 21, Paragraph 2). The Respondent may annex to his Statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.
- 22.3 In his Statement of Defence, or at a later stage in the arbitral proceedings, if the Arbitral Tribunal decides that the delay was justified under the circumstances, the Respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.
- 22.4 The provisions of Article 21, Paragraph 2, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.
- 22.5 Without prejudice to the generality of the provisions of Article 24.3, if the Respondent has raised an objection to the jurisdiction or to the proper constitution of the Arbitral Tribunal, the Statement of Defence shall contain the factual and legal bases of such objection.

AMENDMENTS TO THE CLAIM OR DEFENCE

Article 23

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

Article 24

- 24.1 The Arbitral Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
- 24.2 The Arbitral Tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 24, an arbitration clause which forms part of a contract and which provides for arbitration under the Rules shall be treated as an

agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

24.3 A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence or, with respect to a Counter-claim, in the Reply to the Counter-claim.

24.4 In general, the Arbitral Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the Arbitral Tribunal may proceed with the arbitration and rule on such a plea in their Final Award.

FURTHER WRITTEN STATEMENTS

Article 25

The Arbitral Tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

PERIODS OF TIME

Article 26

The periods of time fixed by the Arbitral Tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed forty-five days. However, the Arbitral Tribunal may extend the time-limits if it concludes that an extension is justified.

EVIDENCE AND HEARINGS (ARTICLES 27 AND 28)

Article 27

27.1 Each party shall have the burden of proving the facts relied on to support its claim or defence.

27.2 The Arbitral Tribunal may, if it considers it appropriate, require a party to deliver to the Tribunal and to the other party, within such a period of time as the Arbitral Tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his Statement of Claim or Statement of Defence.

27.3 At any time during the arbitral proceedings the Arbitral Tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Article 28

- 28.1 Any party which expresses a desire to that effect has the right to be heard orally before the Arbitral Tribunal on the merits of the dispute, unless the parties have agreed in writing on documents-only arbitration.
- 28.2 In the event of an oral hearing, the Arbitral Tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- 28.3 The Arbitral Tribunal shall have authority to establish time-limits for hearings or any part thereof.
- 28.4 If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the Arbitral Tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.
- 28.5 The Arbitral Tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the Tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the Tribunal at least fifteen days before the hearing.
- 28.6 Hearings shall be held *in camera* unless the parties agree otherwise. The Arbitral Tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The Arbitral Tribunal is free to determine the manner in which witnesses are examined.
- 28.7 Evidence of witnesses may also be presented in the form of written statements signed by them. Any party may request that a witness, on whose testimony another party seeks to rely, should attend for oral questioning at a hearing before the Arbitral Tribunal. If the Arbitral Tribunal orders that other party to produce the witness and the witness fails to attend the oral hearing without good cause, the Arbitral Tribunal may place such weight on the written testimony (or exclude the same altogether) as it considers appropriate in the circumstances of the case.
- 28.8 Any witness who gives oral evidence at a hearing before the Arbitral Tribunal may be questioned by each of the parties under the control of the Arbitral Tribunal. The Arbitral Tribunal may put questions at any stage of his evidence.
- 28.9 The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

INTERIM AND CONSERVATORY MEASURES

Article 29

- 29.1 At the request of any party, the Arbitral Tribunal shall have the power, unless otherwise agreed in writing by the parties:
- (a) to order any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods;
 - (b) to order any respondent party to a claim or counter-claim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate;
 - (c) to order on a provisional basis, subject to final determination in an Award, any relief that the Arbitral Tribunal would have power to grant in an Award, including a provisional order for the payment of money or the disposition of property as between any parties;
 - (d) to order any claiming or counter-claiming party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate. In the event that a claiming or counter-claiming party does not comply with any order to provide security, the Arbitral Tribunal may stay that party's claims or counter-claims or dismiss them in an award.
- 29.2 Such interim measures and conservatory measures may be made in the form of an Interim Award. The Arbitral Tribunal shall be entitled to require security for the costs of such measures.
- 29.3 A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

EXPERTS TO THE ARBITRAL TRIBUNAL

Article 30

- 30.1 The Arbitral Tribunal, after consulting with the parties, may appoint one or more experts to report to it, in writing, on specific issues to be determined by the Tribunal. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the parties.
- 30.2 The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them.

Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision.

- 30.3 Upon receipt of the expert's report, the Arbitral Tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.
- 30.4 At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 28 shall be applicable to such proceedings.
- 30.5 Experts to the Arbitral Tribunal shall be and remain impartial and independent of the parties throughout the arbitration proceedings.

DEFAULT

Article 31

- 31.1 If, within the period of time fixed by the Arbitral Tribunal, the Claimant has failed to communicate his claim without showing sufficient cause for such failure, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the Arbitral Tribunal, the Respondent has failed to communicate his Statement of Defence without showing sufficient cause for such failure, the Arbitral Tribunal shall order that the proceedings continue.
- 31.2 The provision of Article 28.1 shall apply *mutatis mutandis* to any Statement of Counter-claim and Defence to Counter-claim.
- 31.3 If one of the parties, duly notified under the Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitral Tribunal may proceed with the arbitration.
- 31.4 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitral Tribunal may make the award on the evidence before it.

CLOSURE OF HEARINGS

Article 32

- 32.1 The Arbitral Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

32.2 The Arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the Award is made.

WAIVER OF RULES

Article 33

A party who knows that any provision of, or requirement under, the Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

Section IV. The Award

DECISIONS

Article 34

34.1 When there are three arbitrators, any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators.

34.2 In the case of questions of procedure, when there is no majority or when the Arbitral Tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the Arbitral Tribunal.

FORM AND EFFECT OF THE AWARD

Article 35

35.1 In addition to making a Final Award, the Arbitral Tribunal shall be entitled to make Interim, Interlocutory, or Partial awards.

35.2 The Award shall be made in writing and shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given.

35.3 The Award may be expressed in any currency. The Arbitral Tribunal may order that simple or compound interest shall be paid by any party on any sum awarded at such rates as the Arbitral Tribunal determines to be appropriate.

35.4 The Award shall be signed by the arbitrators and it shall contain the date on which and the place where the Award was made. Where there are three arbitrators and one of them fails to sign, the Award shall state the reason for the absence of the signature.

- 35.5 The sole arbitrator or the presiding arbitrator shall be responsible for delivering the Award to the Centre. Copies of the Award signed by the arbitrators shall be communicated to the parties by the Centre, provided that all costs of the arbitration have been paid to the Centre by the parties or one or more of them.
- 35.6 All Awards shall be final and binding on the parties. By agreeing to arbitration under the Rules, the parties undertake to carry out any Award immediately and without any delay (subject only to the provisions of Article 39).
- 35.7 Without prejudice to the generality of the provisions of Article 4.3 of the Rules, the award may be made public only with the consent of all parties.
- 35.8 If the arbitration law of the country where the Award is made requires that the Award be filed or registered by the Arbitral Tribunal, the Centre shall assist the Tribunal in complying with such requirement within the period of time required by law.

APPLICABLE LAW, AMIABLE COMPOSITEUR

Article 36

- 36.1 The Arbitral Tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitral Tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- 36.2 The Arbitral Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the Arbitral Tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 36.3 The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless and to the extent that the parties have expressly agreed in writing on the application of another arbitration law and such agreement is not prohibited by the law of the place of arbitration.
- 36.4 In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

Article 37

- 37.1 If, before the Award is made, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an Arbitral Award on Agreed

Terms. The Arbitral Tribunal is not obliged to give reasons for such an award.

- 37.2 If, before the Award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the Arbitral Tribunal shall, after consultation with the Centre, inform the parties of its intention to issue an order for the termination of the proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 37.3 Copies of the order for termination of the arbitral proceedings, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the Centre. The Centre shall transmit the order for termination to the parties.
- 37.4 Copies of the Arbitral Award on Agreed Terms, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the Centre: the provisions of Article 35, paragraphs 3 to 8, shall apply.

INTERPRETATION OF THE AWARD

Article 38

- 38.1 Within thirty days after the receipt of the Award, either party, with notice to the other party, may request that the Arbitral Tribunal give an interpretation of the Award.
- 38.2 The interpretation shall be given in writing within forty-five days, after the receipt of the request. The interpretation shall form part of the Award and the provisions of Article 35, paragraphs 2 to 8, shall apply.

CORRECTION OF THE AWARD

Article 39

- 39.1 Within thirty days after the receipt of the award, either party, with notice to the other party and to the Centre, may request the Arbitral Tribunal to correct in the Award any errors in computation, any clerical or typographical errors, or any errors of similar nature.
- 39.2 The Arbitral Tribunal may within thirty days after the communication of the Award make such corrections on its own initiative.
- 39.3 Such corrections shall be in writing, and the provisions of Article 35, paragraphs 2 to 8, shall apply.

ADDITIONAL AWARD

Article 40

- 40.1 Within thirty days after the receipt of the Award, either party, with notice to the other party and to the Centre, may request the Arbitral Tribunal to make an Additional Award as to claims presented in the arbitral proceedings but omitted from the award.
- 40.2 If the Arbitral Tribunal considers the request for an Additional Award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its Award within sixty days after the receipt of the request.
- 40.3 When an Additional Award is made, the provisions of Article 35, paragraphs 2 to 8, shall apply.

COSTS (Articles 41 to 43)

Article 41

The Arbitral Tribunal, in consultation with the Director of the Centre, shall fix the costs of arbitration in its Award. The term "costs" includes:

- (a) The fees of the Arbitral Tribunal;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the Arbitral Tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal;
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable;
- (f) Where the parties have designated an appointing authority other than the Centre, any fees and expenses of such appointing authority; in such circumstances, the fees shall be fixed by the Director of the Centre in consultation with the appointing authority;
- (g) The expenses reasonably incurred by the Centre in connection with the arbitration, as well as the Registration Fee and the Centre's Administrative Charges determined in accordance with Table I. Any facilities made available by the Centre itself may be charged for on a comparable basis. All such expenses, fees and charges, and the costs of any facilities provided, shall be fixed by the Director of the Centre.

Article 42

- 42.1(a) The fees of the Arbitral Tribunal shall be fixed in accordance with Table II, save where a higher figure is considered by the Centre to be justified, taking into account the complexity of the subject-matter, the time spent by the arbitrators, and any other relevant circumstances of the case.
- 42.1(b) For the purposes of calculating the amount in dispute, the value of any counter-claim or set-off shall be added to the amount of the claim.

Article 43

- 43.1 Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitral Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 43.2 With respect to the costs of legal representation and assistance referred to in Article 41, paragraph (e), the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
- 43.3 When the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 41 and Article 42 paragraph 1, in the text of that order or award.
- 43.4 No additional fees may be charged by an Arbitral Tribunal for interpretation or correction or completion of its award under Articles 38 to 40.

DEPOSIT OF COSTS

Article 44

- 44.1 The Director of the Centre shall prepare an estimate of the costs of the arbitration and may request each party to deposit an equal amount as an advance for those costs.
- 44.2 Where counter-claims are submitted, the Director may, at the request of any party, fix separate advances for claims and counter-claims.
- 44.3 During the course of the arbitral proceedings the Director of the Centre may request supplementary deposits from the parties.
- 44.4 If the required deposits are not paid in full within thirty days after the receipt of the request, the Director of the Centre shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal, after consultation with the

Director of the Centre, may order the suspension or termination of the arbitral proceedings.

44.5 The Director of the Centre may apply the deposits towards disbursements for the costs of the arbitration.

44.6 After the Award has been made, the Director of the Centre shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

GENERAL RULES

Article 45

None of the staff of the Centre, the Director of the Centre, any arbitrator or any expert to the Arbitral Tribunal shall be liable to any party howsoever for any act or omission in connection with any arbitration conducted by reference to the Rules.

Article 46

The parties and the Arbitral Tribunal agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Article 47

In all matters not expressly provided for in the Rules, the parties, the Arbitral Tribunal and the Centre shall act in such a matter as they consider appropriate.

COSTS OF ARBITRATION

TABLE I

A. Registration Fee USD750

B. Administrative Charges (USD)

Amount in dispute (USD)		Fee (USD)
1	Up to 150,000	3% with the minimum of 1,500
2	From 150,001 up to 300,000	4,500 + 2% in excess of 150,000
3	From 300,001 up to 1,500,000	7,500 + 1% in excess of 300,000
4	From 1,500,001 up to 3,000,000	19,500 + 0.30% in excess of 1,500,000
5	From 3,000,001 up to 6,000,000	24,500 + 0.20 in excess of 3,000,000
6	From 6,000,001 up to 15,000,000	30,000 + 0.15% in excess of 6,000,000
7	More than 15,000,000	43,500 + 0.10% in excess of 15,000,000

TABLE II**C. ARBITRATOR'S SCHEDULE OF FEES
FOR A SOLE ARBITRATOR**

Amount in dispute (USD)		Minimum	Maximum
1	Up to 150,000	\$3,000	7.00%
2	From 150,001 up to 300,000	1.00%	4.00%
3	From 300,001 up to 1,500,000	0.50%	2.00%
4	From 1,500,001 up to 3,000,000	0.40%	1.00%
5	From 3,000,001 up to 6,000,000	0.30%	0.80%
6	6,000,001 up to 15,000,000	0.20%	0.50%
7	From 15,000,001 up to 30,000,000	0.10%	0.30%
8	From 30,000,001 up to 150,000,000	0.05%	0.15%
9	From 150,000,001 up to 300,000,000	0.02%	0.08%
10	Over 300,000,000	0.01%	0.05%

NOTE: Minimum fee paid to sole arbitrator, or each member of an arbitral tribunal is \$3,000.

TABLE III**D. ILLUSTRATION OF SCHEDULE OF FEES**

Amount Between (USD)		Minimum Amount (USD)	Maximum Amount (USD)
1	Up to 150,000	3,000	10,500
2	150,000 – 300,000	3,000 + 1.00%	10,500 + 4.00%
3	300,000 – 1,500,000	4,500 + 0.50%	16,500 + 2.00%
4	1,500,000 – 3,000,000	10,500 + 0.40%	40,500 + 1.00%
5	3,000,000 – 6,000,000	16,500 + 0.30%	55,500 + 0.80%
6	6,000,000 – 15,000,000	25,500 + 0.20%	79,500 + 0.50%
7	15,000,000 – 30,000,000	43,500 + 0.10%	124,500 + 0.30%
8	30,000,000 – 150,000,000	58,500 + 0.05%	169,500 + 0.15%
9	150,000,000 – 300,000,000	118,500 + 0.20%	349,500 + 0.08%
10	Over 300,000,000	148,500 + 0.01%	469,500 + 0.05%

APPENDIX IV

Model Clauses

(1) Future Disputes

Where parties to a contract wish to have future disputes referred to arbitration under the Arbitration Rules of the Regional Centre for International Commercial Arbitration-Lagos, the following clause is recommended:-

The words, spaces, in square brackets should be deleted/completed as necessary:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Regional Centre for International Commercial Arbitration-Lagos, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be [one or three].

The place of arbitration shall be [City and or Country].

The language to be used in the arbitral proceedings shall be [].

The governing law of the contract shall be the substantive law of [].”

(2) Existing Disputes

Where a dispute has already arisen, but there is no agreement between the parties to arbitrate, or if the parties wish to vary a dispute resolution clause so as to provide for arbitration under the Rules of the Regional Centre for International Commercial Arbitration-Lagos, the following clause is recommended:

Words, spaces, in square brackets should be deleted / completed as necessary.

“A dispute having arisen between the parties concerning [insert the nature of the dispute], the parties hereby agree that the dispute shall be referred to and finally resolved by arbitration under the Rules of the Regional Centre for International Commercial Arbitration-Lagos.

The number of arbitrators shall be [one or three].

The place of arbitration shall be [City and or Country].

The language to be used in the arbitral proceedings shall be []. The governing law of the contract [is/shall be] the substantive law of [].”

All Communications should be addressed to:

The Director
Regional Centre for International
Commercial Arbitration-Lagos
6th Floor, Marble House
1, Alfred Rewane Road
(formerly Kingsway Road)
P.O. Box 50565, Ikoyi
Lagos, Nigeria

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RCICAL

CONCILIATION / MEDIATION RULES

Effective 1 July 2008

**REGIONAL CENTRE FOR
INTERNATIONAL
COMMERCIAL ARBITRATION-LAGOS**

(Established under the Auspices of the Asian-African Legal Consultative Organization)

**REGIONAL CENTRE FOR INTERNATIONAL
COMMERCIAL ABRITRATION-LAGOS**

CONCILIATION / MEDIATION RULES

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CONCILIATION/MEDIATION

Introduction

Mediation or Conciliation is a voluntary process in dispute resolution whereby a neutral third party who is independent of the parties, assists them to reach agreement, developing options for them so that they may reach this objective.

The mediator/conciliator does not impose a settlement upon the parties. He* may propose a settlement if the parties so wish. His function is to assist the parties to reach a settlement. Where this fails, the mediation ends. The procedure is very flexible and the mediator/conciliator can confer with each party separately. The process could take one day or a few days at the most, or take longer, if circumstances exist to warrant an extension of time.

Under the revised Rules for Conciliation/Mediation of the Regional Centre for International Commercial Arbitration-Lagos, the mediator/conciliator may make proposals for a settlement of the dispute only at the request or with the consent of all parties.

The Director of the Regional Centre for International Commercial Arbitration-Lagos can assist in the selection or appointment of the mediator/conciliator(s).

* *A term used in this context to mean "male" or "female"*

In the Rules, the words-"mediation and "conciliation-are used interchangeably and reference to "Conciliator and "conciliation" shall include "mediator and "mediation".

The revised Rules for Conciliation/Mediation under the auspices of the Regional Centre for International Commercial Arbitration-Lagos incorporate many of the provisions of the UNCITRAL** Conciliation Rules. They may be used in both domestic and international cases where parties opt to conciliate either preliminary to arbitration, in lieu of arbitration or in the course of arbitration.

* *UNITED NATIONS COMMISSION FOR INTERNATIONAL TRADE LAW*

MODEL CONCILIATION/MEDIATION CLAUSE

For parties who wish to refer their dispute to the Centre for mediation or conciliation, the following form of agreement is recommended:

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by conciliation/mediation***in accordance with the Rules for Conciliation/Mediation of the Regional Centre for International Commercial Arbitration-Lagos".

* *Delete as appropriate*

**REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION-LAGOS
RULES FOR CONCILIATION/MEDIATION**

RULE 1 : Application of the Rules

- (1) Where the parties have agreed to conciliate under the auspices of the Regional Centre for International Commercial Arbitration-Lagos-(**RCICAL**), **these Rules shall apply.**
- (2) The parties may agree to exclude or vary any part of the Rules at any time.
- (3) Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

RULE 2 : Initiation and Commencement of Conciliation/Mediation

- (1) The party initiating conciliation shall submit a written request to the RCICAL which shall contain the following:
 - (a) The names and addresses of the parties;
 - (b) A reference to the conciliation clause or a copy of the separate conciliation agreement, if any;
 - (c) A reference to the contract or other legal relationship out of or in relation to which the dispute arises;
 - (d) A proposal as to the number of Conciliators (one to three), if the parties have not agreed thereon;
 - (e) The nature of the dispute and the amount involved and/or other remedies sought;
 - (f) Registration fee in accordance with the schedule of fees annexed.
- (2) The RCICAL shall send a copy of the request to the other party.
- (3) Conciliation proceedings commence when the other party accepts the request to conciliate in writing.
- (4) If the other party rejects the request for conciliation or if the RCICAL does not receive a reply within 30 days from the date on which the RCICAL sends the conciliation request, the RCICAL may elect to treat this as a rejection of the invitation to conciliate and inform the party initiating conciliation accordingly.

RULE 3 : Number of Conciliators/Mediators

There shall be one Conciliator unless the parties agree that there shall be two or three Conciliators. Where there is more than one Conciliator, they ought, as a general rule, to act jointly.

RULE 4 : Appointment of Conciliators/Mediators

- (1)
 - (a) In conciliation proceedings with one Conciliator, the parties shall endeavour to reach an agreement on the name of a sole Conciliator.
 - (b) In conciliation proceedings with two Conciliators, each party appoints one Conciliator;
 - (c) In conciliation proceedings with three Conciliators, each party appoints one Conciliator. The parties shall endeavour to reach an agreement on the third Conciliator.
- (2) The Director of the RCICAL shall assist in the appointment of Conciliator(s) if the parties fail to reach an agreement on the name or names of the Conciliator(s), in particular;
 - (a) A party may request the Director to recommend the name(s) of suitable individuals to act as Conciliator(s) or;
 - (b) The parties may agree that the appointment of one or more Conciliators be made directly by the Director.

In recommending or appointing individuals to act as Conciliators, the Director shall have regard to such considerations as are likely to secure the appointment of an independent and impartial Conciliator and, with respect to a sole or third Conciliator, shall take into account the advisability of appointing a Conciliator of a nationality other than the nationalities of the parties.

RULE 5 : Submission of Statements To Conciliator

- (1) The Conciliator*, upon his appointment, requests each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his statement to the other party.
- (2) The 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. The party sends a copy of the statement to the other party.
- (3) At any stage of the conciliation proceedings, the Conciliator may request a party to submit to him such additional information, as he deems appropriate.
- (4) Where pursuant to this Rule, each party submits written statements and documents to the Conciliator and to the other party, copies shall also be furnished to the RCICAL.

**In this and the following articles, the term "Conciliator" applies to a sole Conciliator, two or three Conciliators, as the case may be.*

Rule 6 : Representation And Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party, to the Conciliator and to the RCICAL; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

Rule 7 : Role Of Conciliator

- (1) The Conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) The 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 the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- (3) The Conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the Conciliator hear oral statements and the need for a speedy settlement of the dispute.
- (4) At any stage of the conciliation proceedings the Conciliator may at the request or with the consent of all parties make proposal for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by any reasons. Such proposals shall be made in good faith to facilitate the conciliation process, and shall not be binding on the parties.

Rule 8 : Administrative Assistance

The Director of the RCICAL may arrange for administrative assistance or facilities in order to facilitate the conduct of the conciliation proceedings at the request of the Conciliator or the parties.

Rule 9 : Communication Between Conciliator And Parties

The 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.

Rule 10 : Venue

The conciliation shall be at the RCICAL in Lagos or at any other place chosen by the parties in consultation with the Conciliator.

Rule 11 : Disclosure of Information

When the Conciliator receives factual information concerning the dispute from a party, he discloses 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. However, when a party gives any information to the Conciliator subject to a specific condition that it be kept confidential, the Conciliator does not disclose that information to the other party.

Rule 12 : Co-operation of Parties With Conciliator

The parties will in good faith co-operate with the Conciliator and, in particular, will endeavour to comply with requests by the Conciliator to submit written materials, provide evidence and attend meetings.

Rule 13 : Suggestions By Parties For Settlement Of Dispute

Each party may, on his own initiative or at the invitation of the Conciliator, submit to the Conciliator suggestions for the settlement of the dispute.

Rule 14 : Settlement Agreement

(1) When it appears to the Conciliator that there exist elements of a settlement which would be acceptable to the parties, he formulates the terms of a possible settlement and submits them to the parties, for their observation. After receiving the observations of the parties, the Conciliator may formulate the terms of a possible settlement in the light of such observations.

** The parties may wish to consider including in the settlement a clause that any dispute arising out of or relating to the settlement agreement shall be submitted to arbitration.*

(2) If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement*. If requested by the parties, the Conciliator draws up, or assists the parties in drawing up the settlement agreement.

(3) The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

Rule 15 : Confidentiality

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

Rule 16 : Termination of Conciliation Proceedings

(1) The Conciliation proceedings are terminated:

(a) By the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) By a written declaration of the Conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

- (c) By a written declaration of the parties addressed to the Conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
 - (d) By a written declaration of a party to the other party and the Conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
 - (e) Within three months from the date of commencement of conciliation unless agreed otherwise by the parties and the Conciliator.
- (2) Unless agreed otherwise, the Conciliator at the termination of the conciliation proceedings shall furnish the Director of the RCICAL a copy of the settlement agreement signed by the parties.

Rule 17 : Resort To Arbitral Or Judicial Proceedings.

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Rule 18 : Costs

- (1) The Director of the RCICAL shall fix the costs of the conciliation in accordance with the schedule of fees annexed. The term "Costs" includes:
- (a) The fee of the Conciliator, which shall be reasonable in amount;
 - (b) The travel and other expenses of the Conciliator;
 - (c) The travel and other expenses of witnesses requested by the Conciliator with the consent of the parties
 - (d) The cost of any expert advice requested by the Conciliator with the consent of the parties;
 - (e) The expenses incurred by the RCICAL in connection with the conciliation as well as its administrative charges.
- (2) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by the party.

RULE 19 : Deposits

- (1) The Director of the RCICAL shall at the commencement of the conciliation request each party to deposit an equal amount as an advance for the costs referred to in Rule 18 (1) which are expected to be incurred.
- (2) During the course of the conciliation proceedings the Director of the RCICAL may request supplementary deposits from the parties in equal amounts.
- (3) If the required deposits are not paid in full by both parties within thirty days after the receipt of the request, the Director of the RCICAL shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made the Conciliator, after consultation with the Director of the RCICAL, may order the suspension or termination of the conciliation proceedings.
- (4) The Director of the RCICAL may apply deposits towards disbursements for the costs of conciliation.
- (5) Upon termination of the conciliation, the Director of the RCICAL shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

**Rule 20 : Role of Conciliator In
Other Proceedings**

- (1) The Conciliator shall not, without the consent of the parties, act as an arbitrator or as a representative or counsel of a party or appear as a witness in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.
- (2) The Conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

**Rule 21 : Admissibility of Evidence In
Other Proceedings**

Unless the parties agree otherwise, they will not 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 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 conciliation proceedings;
- (c) Proposals made by the Conciliator;
- (d) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator.

RULE 22 : Exclusion Of Liability.

Neither RCICAL nor the Conciliator shall be made liable to any party for any act or omission related to the conduct of the conciliation proceedings.

RULE 23 : Waiver Of Defamation.

The parties and the Conciliator agree that statements or comments whether written or oral made in the course of the conciliation proceedings shall not be relied upon to found or maintain any action for defamation, libel, slander, or any related complaint.

SCHEDULE OF FEES

(a) Registration Fee

A Registration fee of US\$750 is payable by the party initiating conciliation (Rule 2) (1) (f)

(b) Deposit

A deposit of US\$1,000 towards administrative cost is payable by each party on a reference to conciliation/mediation. This payment is not refundable and shall be credited to the portion of the administrative costs paid by each party for the conciliation.

(c) Administrative Costs

The administrative costs for a conciliation/mediation shall be fixed at half of the amount calculated in accordance with the scale of administrative costs as set out in Table I of the RCICAL Arbitration Rules with a minimum of US\$1,500.00.

In the event that the amount in dispute is not stated, the Director of RCICAL shall fix the administrative costs.

(d) Conciliator/Mediator's Fee

In fixing the fee of the Conciliator/Mediator the Director of the RCICAL may undertake consultations with the Conciliator/Mediator and the parties. Such fee shall be reasonable in amount, taking into consideration the amount in dispute, the complexity of the subject matter, the time spent by the Conciliator/Mediator and any other relevant circumstances of the case.

**INITIATION AND COMMENCEMENT
OF CONCILIATION (RULE 2)**

(To be completed by Applicant)

To:

The Director
Regional Centre for International Commercial Arbitration-Lagos
6th Floor, Marble House
1 Alfred Rewane Road (Former Kingsway Road)
Falomo – Ikoyi
P. O. Box 50565
Lagos

Tel: ++234 (1) 2705516, 2703572, 2692834
Fax: ++234 (1) 2713579
E-mail: info@rcical.org
Website: www.rcical.org

REQUEST FOR CONCILIATION

1. I/We (Name & Address, tel. & fax of Party A) hereby apply to you for a dispute to be referred to conciliation under the Rules for Conciliation of the Regional Centre for International Commercial Arbitration, Lagos.

2. The other parties in the dispute are (Names & addresses, tel. & fax of the other parties).

3. The dispute has arisen out of or in relation to:

* (a) a contract made on
(date).....between the parties
for..... (name/nature
of contract).....
.....

* (b) (other legal relationship, please specify)
.....
.....

4. * (a) The contract (or legal relationship) referred to in paragraph 3 above contains a conciliation clause, a copy of which I/we enclose herewith.

* (b) A copy of the conciliation agreement in accordance with Form D of the Rules is enclosed.

* (c) All parties have agreed to execute a conciliation agreement in accordance with Form D of the Rules.

5. An outline of the dispute as I/we see it and amount (or kind) of claim I/we wish to make are given below:

.....
.....

6. * (a) The parties have agreed that the number of Conciliators shall be

* (b) The parties have not agreed on the number of Conciliators, but I/we propose to have (number).

7. I/we enclose a cheque/bank draft/money order for the sum of US\$750.00 being registration fee

Signed.....

Name.....

For & on behalf of Applicant

**Delete where not applicable.*

**INITIATION AND COMMENCEMENT
OF CONCILIATION (RULE 2)**

(To be completed by the Director of the Centre)

To: (Other parties referred to in paragraph 2 of Form A).

REQUEST FOR CONCILIATION

1. I have received an application for conciliation of a dispute as set out in a letter from (Name(s) of Applicant(s), a copy of which is enclosed. Kindly confirm that you intend to proceed with such conciliation by completing Form C (attached hereto) and returning the duplicate copy thereof.

2. If I do not have a response from you within 30 days of the date of this letter I would assume that you do not propose to proceed and I will inform the applicant accordingly.

Signed.....
Director
Regional Centre for International
Commercial Arbitration-Lagos

Date:

**INITIATION AND COMMENCEMENT
OF CONCILIATION (RULE 2)**

(To be completed by each of the other parties separately)

To:

The Director
Regional Centre for International Commercial Arbitration-Lagos
6th Floor, Marble House
1 Alfred Rewane Road (Former Kingsway Road)
Falomo-Ikoyi
P. O. Box 50565
Lagos

REQUEST FOR CONCILIATION

- 1. I/We acknowledge receipt of your letter, Ref:
.....dated.....
- 2. I/We state my/our position as follows:
(other party/parties to give an outline of their version of the dispute and
claims and counter-claims, if any. Please attach additional sheets if required).
.....
.....
- 3. Kindly initiate proceedings for conciliation towards an amicable settlement.

Signed by.....
For & on behalf of (name of the other party)

Date.....

**INITIATION AND COMMENCEMENT OF
CONCILIATION (RULE 2)**

MODEL CONCILIATION AGREEMENT

This Agreement is made on.....day of20between

(Name and address of Party A) and
(Name and address of Party B) and
(Name and address of Party C) and
(Name and address of Conciliator) and

WHEREAS:

- A. The Parties have entered into a contract/other legal relationship (describe)
.....
- B Disputes or differences have arisen between the Parties as follows:
.....
- C. The Parties have read and understood the Rules for Conciliation of the Regional Centre for International Commercial Arbitration-Lagos.

IT IS AGREED

- 1. The Parties shall endeavour in good faith to resolve their disputes or differences by conciliation to be conducted in accordance with the Rules for Conciliation of the Regional Centre for International Commercial Arbitration, Lagos or any modification thereto as may be agreed by the Parties.
- 2. The Parties agreed to appoint.....as Conciliator.
- 3. The Parties agreed to pay the fees and costs of Conciliation as set forth in Rule 18 of the Rules for Conciliation of the Regional Centre for International Commercial Arbitration, Lagos.

.....
Signed by (name & designation)
for and on behalf of Party A

.....
Signed by (name & designation)
for and on behalf of Party B

.....
Signed by (name & designation)
for and on behalf of Party C

.....
Signed by Conciliator

All Communications should be addressed to:

The Director
Regional Centre for International
Commercial Arbitration-Lagos
6th Floor, Marble House
1, Alfred Rewane Road
(formerly Kingsway Road)
P.O. Box 50565, Ikoyi
Lagos, Nigeria

Telephone: + + 234 1 2705516, 2703572

Fax: + + 234 1 2713579

E-mail: info@rcicalagos.org

Website: www.rcicalagos.org