

**NIGERIAN COMMUNICATIONS
COMMISSION**

**DISPUTE RESOLUTION
GUIDELINES**

SEPTEMBER 2004

CHAPTER 1

NIGERIAN COMMUNICATIONS COMMISSION SHORT FORM PROCEDURE APPLICABLE FOR SMALL CLAIMS CONSUMER DISPUTES ARBITRATION

EXPLANATORY NOTES

This Guideline is made pursuant to the powers conferred on the Nigerian Communications Commission (NCC) under sections 4(p) and 75(2) of the Nigerian Communications Act 2003. The Guideline is principally intended for small claims consumer disputes involving amounts in dispute not exceeding ₦1,000,000 (One million Naira).

The procedure is simple, quick, informal and inexpensive. Each party may present a written statement of its arguments in the dispute together with supporting documents and comment on the argument and evidence of the other party. The arbitrator shall make the decision without an oral hearing on documents only and it is important to include all evidence upon which a party wishes to rely.

By applying for arbitration the parties agree to the non-disclosure of the proceedings, award and reasons for the award to any stranger to the proceedings unless it is necessary to do so in order to enforce the award

The Guideline is not designed to deal with complicated disputes, which should be dealt with by more formal oral hearing and evidence to ensure their proper resolution. A decision on the applicability of this procedure shall be at the discretion of the Commission. The applicable rules are the NCC short form consumer dispute resolution guidelines.

The Commission shall appoint the arbitrator. All appointments are within the Commission's exclusive control. The decision of the arbitrator shall be final and binding on the parties.

INTRODUCTION

- 1.1 The Nigerian Communications Commission (hereinafter referred to as the “Commission”) has established this procedure pursuant to the provisions of sections 4(p) and 75(2) of the Nigerian Communications Commission Act 2003.
- 1.2 The object of arbitration is to obtain the fair resolution of disputes by an impartial arbitration without unnecessary delay and expense. The parties and the arbitrator undertake to do all things necessary in the achievement of this objective.
- 1.3 The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer-related disputes in the telecommunications sector.
- 1.4 The guideline does not apply to claims in which the amount in dispute or compensation claimed exceeds ₦1,000,000 (One million Naira) or that which involves complicated issues of law or where there is likely to be examination of witnesses.
- 1.5 As the procedure is designed for cost effective and inexpensive arbitration the rules provide for a “documents only” determination with provision for the submission of any other required additional evidence. Any documentation submitted by either party to the Arbitrator shall remain confidential.
- 1.6 The Commission administers arbitrations under the procedure independently. Arbitrators are selected by appointment from the Commission’s panel of experienced arbitrators.
- 1.7 An application for arbitration under these Rules does not relieve either party of any obligation to pay any amounts, which are due to the other party and are not in dispute.
- 1.8 Registration fees are payable by the Claimant when an application for arbitration is submitted. These fees are charged on the scales set out in the application form and are refundable only in accordance with Rule 7.1.

2. COMMENCEMENT OF ARBITRATION

- 2.1 A party wishing to commence an arbitration under these rules (the Claimant) must have exhausted all dispute resolution procedures laid down by the service provider without resolution of the compliant.

- 2.2 Where there is no existing arbitration agreement with the other party, the party wishing to commence an arbitration under these rules (the Claimant) shall collect a Request for Arbitration form - **Form NCC I** from the Commission upon payment of the registration fee.
- 2.3 Upon due completion of the Request for Arbitration Form the form shall be served upon the other party (the Respondent) with copy to the Commission.
- 2.4 The Respondent shall sign and date same and forward it back to the Claimant with copy to the Commission. The Claimant shall then forward the duly signed original form back to the Commission. The arbitration commences when the Commission confirms in writing that it has received the original application form as signed by both parties and has accepted the arbitration request.
- 2.5 Within 21 days of confirmation of acceptance from the Commission the Claimant shall forward to the Commission in duplicate a statement establishing its case together with the supporting documents (hereinafter collectively referred to as the “claim documents”)
- 2.6 A copy of the claim documents will be sent by the Commission to the Respondent who shall within 21 days of its receipt send to the Commission in duplicate its defence and any counterclaim together with the supporting documents (hereinafter collectively referred to as the “defence documents”).
- 2.7 A copy of the defence documents will be sent by the Commission to the Claimant who shall within 21 days of its receipt send to the Commission in duplicate its response together with any supporting documents (hereinafter collectively referred to as “reply documents”). The reply documents will be sent by the Commission to the Respondent and must be restricted to points arising from the respondents defence or counterclaim. No additional new points must be included.
- 2.8 In circumstances where parties have entered into an arbitration agreement prior to the dispute arising, the Claimant shall collect from the Commission upon payment of the stipulated registration fee a “Notice of Arbitration” form **Form NCC 2**.
- 2.9 Upon due completion of the Notice of Arbitration the Claimant shall attach a Statement establishing its case with all supporting documents and serve same on the respondent with copy to the Commission. The arbitration commences when the Respondent receives the Notice of Arbitration.
- 2.10 Within 21 days of the service of the Notice of arbitration and accompanying documents the respondent shall serve its defence with all necessary supporting documents on the Claimant. In the event that a counterclaim is alleged, all

necessary supporting documents must be submitted. The written defence and all supporting documents must be copied to the Commission.

- 2.10 The Claimant upon receipt of the Respondent's defence and where applicable any counterclaim has 21 days within which to submit a response together with any documentation in support which must be copied to the Commission. The response must be restricted to points arising from the Respondents defence or counterclaim. The Claimant may not include any new points of claim.

3. APPOINTMENT OF ARBITRATOR

- 3.1 A sole arbitrator appointed by the commission at such stage as considered appropriate shall conduct the arbitration. The Commission shall notify the parties of the arbitrator appointed.
- 3.2 If an arbitrator is unable to act for any reason the Commission shall appoint another arbitrator to act in his place.
- 3.3 The arbitrators appointed in accordance with the provisions of this clause shall be and remain at all times independent of any of the parties and the Commission and shall determine the dispute in an impartial and timely manner.

4. FORM OF PROCEDURE

- 4.1 The arbitration will be conducted on a documents only basis.
- 4.2 The parties claim and defence documents shall contain the following-
- a. All allegations of facts or matters of opinion.
 - b. The evidence in proof of the facts.
 - c. The law to be relied upon.
 - d. Signed and dated affidavits containing statement of the evidence of any witness upon whose evidence the party relies.
 - e. The relief sought or remedies claimed.
 - f. Detailed calculation of any sums claimed.

5. POWERS OF THE ARBITRATOR

5.1 The Arbitrator upon his appointment shall communicate with or issue directions to the parties and have the widest discretion permitted by law to resolve the dispute in a just speedy, economical and final manner in accordance with natural justice and without any need to comply with the provisions of the Evidence Act. No rules or requirements in respect of the law relating to admissibility of evidence shall be applicable to these proceedings.

5.2 The arbitrator's powers shall include the following:-

- (a) Allow the parties' statements to be amended provided that same is not amended in a manner that the amount claimed exceeds ₦1,000,000 (One million Naira).
- (b) Extend any time limits provided hereunder or under his directions.
- (c) Allow submission of further evidence and the amendment of claim or defence.
- (d) Order the parties to produce goods, documents or any other required item property for inspection.
- (e) Appoint an expert to report on specific issues or take legal advice.
- (f) Conduct any further inquiries or inspections as deemed necessary. The parties shall accord the arbitrator all necessary assistance and facilities for the conduct of any such inquiries or inspection.
- (g) Determine the arbitration on the basis of the documents submitted if either of the parties fails to comply with his directives within the time stipulated or at any other extended time, provided 14 days notice has been given that the arbitration shall be so determined.
- (h) Inform the parties if he believes that the dispute is not suitable for determination by this procedure and invite the parties to submit to an agreement for determination of the dispute by the appropriate Commission's procedure.

6. COMMUNICATION BETWEEN THE PARTIES AND THE ARBITRATOR

6.1 Any communication sent by a party to the arbitrator shall be copied by the party to the other party or parties and marked as having been so copied.

6.2 Any communication sent by the arbitrator to one party shall be copied to the other party or parties and marked as having been so copied.

7. COSTS

7.1 Registration fees are payable by the Claimant upon collection of a Request for Arbitration or Notice of Arbitration form. In the event that the dispute is resolved amicably prior to the appointment of an arbitrator by the Commission or the dispute is considered not suitable for determination by this procedure the fees shall be refunded. Registration fees are regarded as part of the costs of the Arbitration and the provisions of clause 7.3 hereof apply to its ultimate apportionment.

7.2 Costs of the arbitration shall include registration fees, the arbitrator's fees and expenses and those of any experts and administrative costs in accordance with the prevailing rates established by the Commission.

7.3 Costs of the arbitration shall be ultimately borne by the losing party, but subject to the overriding discretion of the arbitrator as to which party will bear what proportion of the costs of the arbitration. The arbitrator shall have the discretion to order one party to pay any part of the other's costs where the former has acted unreasonably in any manner including exaggerating its claim or otherwise caused the opposing party unnecessary delay or expense or hindered the timely process of the arbitration procedure.

7.4 Each party shall bear its own costs of preparing and submitting its case.

7.5 The Commission may direct the parties to make one or several interim or final payments on account of the costs of the Arbitration. Such amounts shall be held by the Commission and may from time to time be released to the Arbitrator.

8. MISCELLANEOUS

8.1 Neither the Commission nor the arbitrator shall be liable to any party for any act or omission in connection with the arbitration conducted under these rules.

8.2 Subject to the right of a party to draw the arbitrator's attention to any accidental slip and omission which he has power to correct, neither the Commission nor the arbitrator can enter into any correspondence regarding an Award issued under this scheme.

8.3 Arbitration proceedings must be concluded within sixty days (60) from the date of commencement.

- 8.4 Awards made under this procedure are final and binding on the parties until set aside by a competent court of law.
- 8.5 Nothing in these rules shall preclude the Nigerian Communications Commission from attempting to resolve the dispute if the parties so agree after the commencement of arbitration proceedings.
- 8.6 These rules are subject to revision and the edition of the Rules in force at the time the arbitration commences shall govern the proceedings.

REQUEST FOR ARBITRATION FORM

THE RULES OF THE NIGERIAN COMMUNICATIONS COMMISSION SMALL CLAIMS CONSUMER DISPUTE RESOLUTION GUIDELINE

APPLICATION FOR ARBITRATION

(N.B Before completing this form please refer to the accompanying Explanatory Notes)

To: Nigerian Communications Commission

1. Claimant
of (Address).....
.....

Tel

and

..... Respondent
of (Address)

.....

Tel

Hereby apply to the Nigerian Communications Commission for the following dispute to be referred to arbitration under the current Rules of the short form procedure small claims Consumer Dispute Resolution Guideline for determination by an Arbitrator appointed by the Commission.

2. The dispute concerns the following issues:
.....
.....
.....
.....
.....

(NOTE: Only an outline is required here to enable the dispute to be identified by the parties. The Claimant will be asked to submit a specific claim in detail (statement of case) as soon as the commission accepts the arbitration request).

3. The amount (if any) claimed is N.....
and the amount (if any) Counter claimed is N.....
4. We, the parties to this application, have read the current Rules of the Guideline. We agree to be bound by these Rules and by the award of the Arbitrator appointed to determine the dispute.
5. We require this dispute to be resolved by arbitration.
6. A cheque for the sum of in respect of the Claimant's registration fee, is enclosed.

Signed
(by or for the Claimant)

Date

Signed
(by or for the Respondent)

Date

Cheques should be in favour of "Nigerian Communications Commission"

NOTICE OF ARBITRATION

**The Rules of the Nigerian Communications Commission Small Claims Consumer
Dispute Resolution Guideline.**

(N.B Before completing this form please refer to the accompanying Explanatory Notes)

To: Respondent

.....

of (Address)

.....

Telephone

1. The Claimant

.....

.....

of (Address).....

.....

Tel

Hereby gives you notice that the following dispute which has arisen between us be referred to arbitration in accordance with the provision of Clause of our agreement dated the and be determined under the rules of the Nigerian Communications Commission small claims short form procedure for dispute resolution.

2. The dispute concerns the following issues:-

OUTLINE (Additional paper may be attached)

3. Attached herewith are the following:-

(i) Statement of Case

(ii) **ADDITIONAL DOCUMENTS (LIST ANY OTHER ENCLOSED)**
ADDITIONAL DOCUMENTS

SIGNED

Copy to: -

The Executive Vice Chairman
Nigerian Communications Commission

- ◆ This Form apply where there is an existing arbitration agreement between the parties.
- ◆ Cheques should be made in favour of “Nigerian Communications Commission”

CHAPTER 2

NIGERIAN COMMUNICATIONS COMMISSION ARBITRATION RULES

1. INTRODUCTION

These Rules shall be known as Nigerian Communications Commission Arbitration Rules.

- 1.1 This procedure has been established by the Nigerian Communications Commission (NCC) pursuant to the provisions of sections 4(p) and 75(2) of the Nigerian Communications Commission Act (hereinafter referred to as the Act) 2003 as a means of resolving disputes in the telecommunications sector.
- 1.2 The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means to resolving disputes in the telecommunications sector.
- 1.3 Nothing in these rules shall preclude Nigerian Communications Commission from attempting to resolve the dispute if the parties so agree after the commencement of arbitration proceedings.
- 1.4 An application for arbitration under these Rules does not relieve either party of any obligation to pay any amounts, which are due to the other party and are not in dispute.
- 1.5 Registration fees are payable by a party or the parties submitting a Request for Arbitration or filing a Notice of Arbitration (which ever is applicable) at the current rates of the Commission. The fees are utilized towards defraying the administrative costs of the arbitral proceedings and are regarded as part of the costs of the arbitration to be ultimately borne by the losing party.

2. COMMENCEMENT OF THE ARBITRATION

- 2.1 Any party wishing to commence an arbitration under these rules (the Claimant) shall serve upon the other party to the dispute (the Respondent) with copy to the Commission a Notice of Arbitration which shall include the following information:-
 - (a) A demand that the dispute be referred to arbitration under the auspices of the Commission's arbitration panel
 - (b) The names and addresses of the parties to the arbitration

- (c) Copies of the contractual documents (if any) in which the arbitration agreement is contained or under which the arbitration arises.
 - (d) A reference to the contract out of or in relation to which the dispute arises.
- 2.2 The Notice of Arbitration shall be supported with a statement setting out facts of the case, the evidence and contention of law relied upon and the damages or other relief claimed, and all documents considered relevant.
- 2.3 Within 21 days of the service of the Notice of Arbitration the Respondent shall serve a statement setting out its comments as to the nature and circumstances of the dispute giving rise to the claims and any counter claim alleged. The statement shall include the facts, the evidence and any law relied upon. All documents considered relevant should be attached.
- 2.4 Within 21 days of the receipt of the respondent's statement the claimant shall file a reply to any counterclaim. The reply should contain the facts, the evidence and the law relied upon. All relevant documents are to be attached.
- 2.5 For the purpose of these rules the arbitration is deemed to have commenced on the date when the Respondent receives the Notice of Arbitration.

3 SUBMISSION AGREEMENT

- 3.1 If the Commission is requested by a party, hereinafter referred to as the initiating party wishing to have its dispute with any other party arbitrated under the auspices of the Commission it will approach the other party and seek to persuade it to enter into a submission agreement with the initiating party. Alternatively the initiating party may propose to the other party that the dispute be arbitrated under the auspices of the NCC arbitration guideline. Upon agreement the parties will enter into the Commission's Arbitration Submission Agreement.
- 3.2 The arbitration commences upon the parties entering into a Submission Agreement.
- 3.3 The arbitral tribunal upon its constitution by the Commission shall issue directions to the parties including that pertaining to the filing of statement of claim / defence and all supporting documents.

4 APPOINTMENT OF ARBITRATORS

- 4.1 On receipt of a Notice for Arbitration pursuant to the provisions of Clause 2 hereof or the execution of a Submission Agreement pursuant to the provision of Clause 3 the Commission shall appoint a tribunal from its panel of arbitrators. The tribunal shall consist of three persons. However a sole arbitrator may be appointed if the circumstance and the case so warrant.
- 4.2 The Arbitrator shall be and remain at all times independent of the parties and determine the dispute in an impartial and timely manner.

5. ARBITRATION PROCEDURE

- 5.1 The Tribunal shall adopt procedures appropriate to the case with the aim of achieving the just, speedy, economical and final resolution of the dispute. To that end it shall act fairly and impartially between the parties, giving each party an opportunity to present its case and dealing with that of his opponent.
- 5.2 The Tribunal upon its appointment shall communicate with or issue directions to the parties.
- 5.3 The Tribunal shall have the jurisdiction and power to direct the procedure of the arbitration including the amendment of time limits and other procedural requirements. The arbitrator shall also have the power to :-
- (a) Allow submission of further evidence and the amendment of claim, defence or response;
 - (b) Order the parties to produce documents for inspection;
 - (c) Conduct all such enquiries as may appear to the Arbitrator to be desirable;
 - (d) Receive and take into account any oral or written evidence as the Arbitrator shall decide to be relevant;
 - (e) Appoint an expert to report on specific issues or take legal advice;
 - (f) To take interim measures if deemed necessary including but not limited to ordering security for costs of such measures or the claim;

(g) Proceed with the arbitration if either party fails to comply with these Rules or with the Arbitrator's directions, or if either party fails to attend any meeting or inspection ordered by the Arbitrator but only after giving that party written notice.

5.4 In the event that the Arbitrator considers that the dispute may be resolved on documents only basis, he shall inform the parties and subject to their agreement proceed to issue an award on the basis of the documents submitted by the parties. Otherwise the arbitration will proceed on the basis of oral hearing and evidence.

6 COMMUNICATION BETWEEN THE PARTIES AND THE ARBITRATOR

6.1 Any Communication sent by a party to the Tribunal shall be copied by the party to the other party or parties and marked as having been so copied.

6.2 Any communication sent by the Tribunal to one party shall be copied to the other party or parties and marked as having been so copied.

7 COSTS

7.1 Costs of the arbitration shall include registration fees, arbitrators fees and expenses as fixed by the commission in accordance with the scale in force at the time of the commencement of the arbitral proceedings as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties to the arbitration.

7.2 Cost of the Arbitration shall be paid by the losing party, but subject to the overriding discretion of the arbitrator as to which party will bear what proportion of the costs of the arbitration. In this regard the tribunal shall have the discretion to order one party to pay any part of the other's costs where the former has acted unreasonably and caused the opposing party unnecessary expense or has otherwise hindered the timely process of the arbitration procedure.

7.3 In allocating costs the Tribunal shall have regard to all the material circumstance, including such of the following as may be relevant:-

- a. Which of the claims has led to the incurring of substantial costs and whether they were successful.
- b. Whether any claim which has succeeded was unreasonably exaggerated.

- c. The conduct of the party who has succeeded on any claim and any concession made by the other party.
- d. The degree of success of each party.

7.4 As soon as practicable the Commission shall request the parties to pay in equal shares a deposit on account of the costs of the arbitration. The balance shall be payable prior to the issuance of the Award. However any party shall be free to pay the whole of the advance of costs or balance outstanding should the other party fail to pay its share. If the arbitration is abandoned, suspended or the dispute resolved by the parties agreement or otherwise before an award is made the parties shall be jointly and severally liable for all the costs of the arbitration as determined by the Commission.

8 MISCELLANEOUS

8.1 The Tribunal shall determine the law applicable to the dispute if the parties fail to agree.

8.2 The provisions of the Evidence Act are inapplicable to this procedure.

8.3 Subject to the right of a party to draw the tribunals attention to any accidental slip and omission which it has power to correct, neither the Commission nor the Tribunal shall enter into any correspondence regarding an award issued under this guideline.

8.4 In the event that an arbitrator dies, is incapacitated or is otherwise incapable of acting or dealing expeditiously with the dispute, the Commission shall appoint a substitute arbitrator and inform the parties.

8.5 Neither the Commission nor the Tribunal or any member shall be liable to any party for any act or omission in connection with the arbitration conducted under these rules.

8.6 Arbitration proceedings must be concluded within sixty days (60) from the date of commencement.

8.7 Awards made under this procedure are final and binding on the parties until set aside by a competent court of law.

8.8 These Rules are subject to revision and amendment from time to time and any arbitration under this procedure shall be governed by the edition of the Rules in force at the time the arbitration commences, which shall be taken for that purpose as the time the claimant submitted a notice of arbitration or a submission agreement was entered into.

CHAPTER 3

NIGERIAN COMMUNICATIONS COMMISSION MEDIATION PROCEDURE RULES

1. APPLICATION OF THE RULES

1.1 Parties may by mutual agreement either with respect to existing or future disputes agree to mediation of their disputes under the auspices of the Nigerian Communications Commission (hereinafter referred to as the “Commission”). All such agreements for mediation shall be deemed to be subject to the application of these rules or any variation of same as may be in effect as at the date of the submission.

2. APPROACH TO THE COMMISSION

2.1 Any party or parties to a dispute where there is an existing mediation agreement with the other party or parties may initiate mediation by filing with the Commission a written Request for Mediation which should be copied to the other party or parties.

2.2 Where one party or parties to a dispute or difference in instances where there is no contract or submission agreement providing for mediation, seeks mediation, such party may request the Commission to write the other party to join in a submission to mediation. Upon receipt of such request the Commission may seek the agreement thereto of the other party or parties. Upon approval of the other party, the parties will enter into the Commission’s Model Mediation Agreement

2.3 A request under rules 2.1 and 2.3 above shall be in writing and shall contain the names, addresses, telephone and fax numbers of the parties to the dispute and any persons representing them. Brief details of the nature of the dispute shall be included.

3. THE MEDIATOR

3.1 The designated representative of the Commission shall conduct the Mediation.

3.2 The Commission may appoint another mediator in the place of the person initially designated in the event that the designated mediator is unable to act for any reason.

4. MEDIATION PROCEDURE

4.1 The Mediator shall be responsible for the conduct of the mediation. The Mediator's aim shall be to assist the parties in an impartial manner to achieve an amicable settlement which the parties consider appropriate to their particular circumstances.

4.2 The Mediator shall do all things necessary to facilitate the settlement of the dispute. He shall amongst any other steps considered appropriate:-

- Attend any meetings with any or all of the parties prior to proceeding with the mediation if requested or if such meeting is deemed appropriate.
- Chair and determine the procedure for the Mediation.
- Assist the parties in drawing up any written settlement agreements.
- If requested by all the parties give a non-binding evaluation of the respective merits of the dispute or any aspect of it.
- At the request of all the parties in the event that they are unable to reach agreement during negotiations at the mediation, make a written recommendation as to terms of settlement. Such recommendation need not be such that a court or arbitrator would have made, the emphasis being on an amicable resolution of the dispute.

5. PARTICIPANTS

5.1 The parties may be represented by persons of their choice including legal advisers provided all such representatives have written authority issued by the party being represented. The written authorization indicating the names and addresses of such representatives are to be communicated to the Commission and the other parties and shall state the name of the lead representative vested with the necessary authority to settle the dispute.

5.2 Legal Advisers acting for Parties may participate in the mediation process to such an extent as the mediator may consider useful and appropriate.

6. EXCHANGE OF INFORMATION

Each party shall exchange with the other and send to the Commission within such time as may be stipulated by the mediator or any other date agreed between the parties and the mediator sufficient copies of:-

- a. A concise summary (the summary) setting forth its case with regard to the issues that needs to be resolved.

- b. All the documents to which the Summary refers and any others to which it may want to refer in the mediation (“the Documents”).

In addition each party may bring to the mediation any further documentation which it wishes to disclose.

7. DATE, TIME AND PLACE OF MEDIATION

- 7.1 The Mediator shall in consultation with the Commission fix the time, date and place of each mediation session.

8. RECORD OF PROCEEDINGS

- 8.1 No formal record or transcript of the Proceedings will be made without the prior consent of the parties.

9. SETTLEMENT AGREEMENT

- 9.1 The parties shall record any agreed settlement (Settlement Agreement) which results from the mediation.
- 9.2 The parties upon signing the settlement agreement are bound by the terms of the Agreement as a binding and enforceable contract.

10. CONFIDENTIALITY AND PRIVILEGE

- 10.1 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose:-
 - (i) All information whether given orally or otherwise produced for, or arising in relation to the mediation including the settlement agreement (if any) arising out of it, except in so far as is necessary to implement and enforce any such settlement agreement or to comply with any court direction.
 - (ii) The fact that the Mediation is to take place or has taken place.
- 10.2 All information (whether oral, in writing or any other form including tapes, disks or computer records) produced for during or as a result of the mediation will be privileged, without prejudice and not divulged or admissible as evidence or discoverable in any litigation or arbitration relating to the Dispute. This is not applicable to any information, which would in any event have been admissible or discoverable in any such litigation or arbitration.

10.3 No party shall have access to the mediator's notes.

10.4 None of the Parties to the Mediation Agreement will call the mediator as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to the dispute and the mediator will not voluntarily act in any such capacity without the written agreement of all the parties.

11. PRIVACY

11.1 Mediation Sessions shall be private. Only parties and their representatives are to attend. Any other person may attend only with the permission of the parties and the mediator's consent.

12. TERMINATION

12.1 The mediation proceedings shall terminate:-

- a. Upon the execution of a written settlement agreement by the parties.
- b. If the mediator considers it necessary to bring the proceedings to an end on the basis that the mediation is unlikely to result in a settlement and a written declaration to this effect is submitted by the Mediator.
- c. In the event that any of the parties states in writing that the mediation proceedings be terminated.
- d. The Mediator decides he should retire for any of the reasons in the Code of Conduct .In that event the Commission may designate another mediator to assist the parties to settle the dispute.

13. EXCLUSION OF LIABILITY

13.1 Neither the Commission nor any mediator shall be liable to the parties for any act or omission whatsoever in connection with the mediation.

14. FEES EXPENSES AND COSTS

14.1 The fees of the Commission (which include the mediator's fees and administrative fees) and all such other incidental expenses shall be borne equally by the parties. Payment of these fees shall be made to the Commission in accordance with its fees schedule and mediation terms and conditions.

14.2 Each party will bear its own costs and expenses of its participation in the Mediation. Such costs and expenses shall include the expenses of witnesses (if any) called by either side.

15. STAY OF PROCEEDINGS

15.1 Any litigation or arbitration in relation to the dispute may be commenced or continued notwithstanding the Mediation unless the Parties agree otherwise. The parties shall however be bound to mediate in good faith.

16. POST MEDIATION FUNCTION

16.1 A mediator under these rules shall not act as arbitrator in relation to the same dispute or difference unless the parties agree. Alternatively he or she may agree to determine the matter as an expert after the mediation has come to an end and no settlement agreement has been reached if the parties at this stage so request.

CHAPTER 4

NIGERIAN COMMUNICATIONS COMMISSION RULES FOR THE ARBITRATION OF INTERCONNECTION ISSUES AND DISPUTES

1. INTRODUCTION

- 1.1. These Rules shall be known as the Nigerian Communications Commission (hereinafter referred to as “NCC”) rules for the arbitration of interconnection issues and disputes and shall govern the arbitration of open or unresolved interconnection issues which arise under Chapter VI Part 2 of the Nigerian Communications Act 2003.

2. COMMENCEMENT

- 2.1. The arbitration process is commenced by the filing of a petition for arbitration in six copies with the **Commission** pursuant to Section 4(p) and 75(2) of the Act by any party to the negotiation process (hereinafter referred to as the “Petitioning Party”) where the negotiating process fails to reach an agreement within a period of ninety days.
- 2.2. The arbitration process is deemed to have commenced on the date when the petition is filed with the **Commission**.
- 2.3. The petitioning party shall at the same time as it files the petition at the **Commission** serve copies on all parties to the negotiating process and obtain proof of service which should be filed at the **Commission**.
- 2.4. The petition shall contain all relevant information and documentation including the following:-
- (i) The names, address, telephone numbers and fax number of the petitioner.
 - (ii) The name, address, telephone numbers and fax number of the other party to the negotiation.
 - (iii) The names, address, telephone number and fax of the representative of the parties who participated during the negotiation.
 - (iv) Details of the negotiation history including any mediation process.
 - (v) A detailed statement identifying all unresolved issues and including all relevant documentation concerning those unresolved issues.
 - (vi) A statement indicating the position of each of the parties concerning the unresolved issues including proposed remedies and copies of all relevant documentation relied upon or pertaining to those issues.

- (vii) A statement indicating the issues (if any) which have been resolved by the parties during the negotiation process.
- (viii) A brief addressing the issues and containing all relevant provisions of the Act and applicable NCC regulation and guidelines.
- (ix) In the case of price disputes proposed rates or charges, detailed costs/accounting information and all relevant supporting information and documentation.
- (x) Proposed interconnection agreements submitted by both the petitioning party and the non-petitioning party or the interconnection agreement being negotiated by the parties.
- (xi) Proposed time schedule for the implementation of the terms and conditions of the agreements.
- (xii) Any condition the party wishes to have imposed together with the justification for such.
- (xiii) Any request for interim ruling pending the decision of the arbitrator.
- (xiv) All other documents relevant to the dispute and intended to be relied upon as evidence in the arbitration proceedings.

3. RESPONSE TO THE PETITION

- 3.1. The non petitioning party may respond to a petition for arbitration within a period of twenty – one days after the petition is filed in accordance with the Act, NCC regulations and guidelines and may present any additional issues and provide relevant documentation it wishes to have considered during the negotiation pertaining to any of the issues. The non petitioning party shall file the response in six copies at the **Commission** and at the same, time serve copies on all parties to the negotiating process. Proof of serve should be obtained and filed at the **Commission**.
- 3.2. In the event that a response is not filed the arbitrator shall determine the matter on the basis of the documents before it and in accordance with the Act and applicable NCC regulations and guidelines.

4. NEGOTIATION DURING ARBITRATION

- 4.1. Negotiations may continue between the parties in accordance with the NCC guidelines and regulations pending a final decision by the arbitrator. The parties shall keep the NCC informed on the progress of the negotiation.

5. APPOINTMENT OF ARBITRATOR

- 5.1 The Commission shall appoint an Arbitrator it determines to be qualified who may be a person from the Commission's Staff or outside the **Commission** within a period of 14 days after the petition has been filed.
- 5.2 In the event that an Arbitrator dies, is incapacitated or is otherwise incapable of acting or dealing expeditiously with the dispute, the Commission shall appoint a substitute Arbitrator and inform the parties accordingly.

6. APPOINTMENT OF TECHNICAL ADVISER

- 6.1. The **Commission** may designate one or more **Commission** staff personnel or an outside consultant to serve as technical adviser to the Arbitrator.
- 6.2. The **Commission** may also appoint an expert in arbitration practice and procedure to act as consultant to the Arbitrator.

7. ARBITRATION PROCEDURE

- 7.1. The Arbitrator shall conduct the arbitration in accordance with the provisions of section 76(2) of the Act and to that end adopt procedures appropriate to the case with the aim of achieving the just, speedy and economical resolution of the issues or disputes.
- 7.2. The Tribunal shall act fairly and impartially between the parties giving each party an opportunity to present its case and deal with that of its opponent.

8. COMMUNICATIONS BETWEEN THE PARTIES AND THE ARBITRATOR

- 8.1. A party shall not have any communication relating to the subject matter of the arbitration with the arbitrator, technical adviser or any of the persons involved in the arbitration without communicating same to the arbitrator and the other party

9. PAYMENT OF COST AND FEES

- 9.1. The parties to the proceeding shall bear equally all costs and fees of the arbitrator, that of any technical experts and consultants retained to assist the arbitrator and the administrative fees of the **Commission** as fixed by the **Commission** in accordance with the scale in force at the time of the commencement of the proceedings.
- 9.2. Each party shall bear the legal and any other costs incurred by the party to present its petition or response to a petition filed against it.
- 9.3. As soon as practicable the Communication shall request the parties to pay in equal shares the costs of the arbitration stipulated in Clause 9.1.

- 9.4. The Arbitrator shall have power to order any party who has delayed proceedings or behaved in an unreasonable manner to pay the apportionment or a percentage of the apportionment of the other payment.

10. ARBITRATOR'S DECISION

- 10.1. The Arbitrator shall have the power to issue an interim ruling where a dispute directly affects the ability of a party to continue to provide uninterrupted services to its Customers.
- 10.2. The Arbitrator shall issue its final decision and file same with the **Commission** not later than six months after the filing of the petition for arbitration which period may be extended by the arbitrator after due consultation with the **Commission**.
- 10.3. The Arbitrator's decision must be reasoned, ensure the resolution of issues presented by the parties such that the resolution meets the requirements of the Act, NCC regulations and guidelines and indicate schedules for the implementation of the decision.

11. REVIEW BY THE COMMISSION

- 11.1. The **Commission** shall review the Arbitrator's draft decision with a view to ensuring that same complies with the requirement of the Act and NCC regulation guidelines. No decision shall be rendered by the Arbitrator until it has been approved by the NCC.
- 11.2. The **Commission's** actions in accordance with the provision of Clause 11 hereof are final and binding until set aside by a competent court of law.

12. SUBMISSION OF A MEMORANDUM OF UNDERSTANDING

- 12.1. Within thirty days after the issuance of the arbitrator's decision, the parties to the arbitration shall jointly file with the **Commission** a Memorandum of Understanding incorporating the decisions of the arbitrator as approved by the **Commission**.

13. MISCELLANEOUS

- 13.1. Neither the **Commission**, the Tribunal or technical adviser or consultant shall be liable to any party for any act or omission in connection with the arbitration conducted under these rules.
- 13.2. The Arbitrator's decision as approved by the **Commission** is final and binding on the parties until set aside by a competent court of law.
- 13.3. These rules are subject to revision and amendment from time to time and any arbitration under this procedure shall be governed by the edition of the Rules in force at the time the arbitration commences which shall be taken as stipulated in Clause 2.2 as the date when the petition is filed with the **Commission**.

CHAPTER 5

NIGERIAN COMMUNICATIONS COMMISSION DISPUTE RESOLUTION GUIDELINES

CODE OF CONDUCT FOR ARBITRATORS AND GUIDELINES OF GOOD PRACTICE

Introduction

An Arbitrator should be impartial, independent, competent, diligent and discreet. These guidelines seek to indicate the manner in which these abstract qualities may be assessed. For the purpose of these Guidelines the reference to “he” refers to both male and female arbitrators.

1. Professional Standard

An Arbitrator shall proceed diligently and efficiently to provide the parties with a just and effective resolution of their disputes, and shall be and shall remain free from bias.

2. Acceptance of Appointment

A prospective Arbitrator shall not solicit appointment and shall accept appointment if offered only if he is fully satisfied that he is able to discharge his duties without bias or the appearance of bias; that he is competent to determine the issues in dispute and has an adequate knowledge of the language of the arbitration; that he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.

3. Elements of Bias

3.1 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an Arbitrator favours one of the parties, or where he is prejudiced in relation to the subject matter of the dispute.

Dependence arises from relationships between an Arbitrator and one of the parties, or with someone closely connected with one of the parties.

3.2 Facts which might lead a reasonable person, not knowing the Arbitrator’s true state of mind, to consider that the Arbitrator is dependent on or connected with a party will create an appearance of bias. The same is true if an arbitrator has a material interest in the outcome of the dispute, or if he has already taken a position in relation to it. The appearance of bias is best overcome by full disclosure as described in Guideline 4 below.

- 3.3 Any current direct or indirect business relationship between an Arbitrator and a party, or with a person who is known to be a potentially important witness, will give rise to justifiable doubts as to a prospective Arbitrator's impartiality or independence. He should decline to accept an appointment in such circumstances unless all the parties agree in writing that he may proceed. Examples of indirect relationships are where a member of the prospective Arbitrator's family, his firm, or any business partner has a business with one of the parties.
- 3.4 Past business relationships will not operate as an absolute bar to acceptance of appointment, unless they are of such magnitude or nature as to be, or appear to be, likely to affect a prospective Arbitrator's Judgment.
- 3.5 Continuous and substantial social relationships between a prospective Arbitrator and a party, or with a person who is known to be a potentially important witness in the arbitration, will give rise to justifiable doubts as to the impartiality or independence of a prospective Arbitrator.

4. Duty of Disclosure

- 4.1 A prospective Arbitrator should disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence. Failure to make such disclosure creates an appearance of bias, and may of itself be a ground for disqualification even though the non-disclosed facts or circumstances would not of themselves justify disqualification.
- 4.2 A prospective Arbitrator should disclose:
- (a) Any past or present business relationship, whether direct or indirect as illustrated in Article 3.3, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration. With regard to present relationships, the duty of disclosure applies irrespective of their magnitude, but with regard to past relationships only if they were of more than a trivial nature in relation to the Arbitrator's professional or business affairs. Non-disclosure of an indirect relationship unknown to a prospective arbitrator will not be a ground for disqualification unless it could have been ascertained by making reasonable enquiries;
 - (b) The nature and duration of any substantial social relationships with any party or any person known to be likely to be an important witness in the arbitration;
 - (c) The extent of any prior knowledge he may have of the dispute;

- (d) The extent of any commitments which may affect his availability to perform his duties as Arbitrator as may be reasonably anticipated.
- 4.3 The duty of disclosure continues throughout the arbitral proceedings as regards new facts or circumstances.
- 4.4 Disclosure should be made in writing and communicated to all parties.

5. Communications with Parties

- 5.1 When approached with a view to appointment, a prospective arbitrator should make sufficient enquiries in order to inform himself whether there may be any justifiable doubts regarding his impartiality or independence; whether he is competent to determine the issues in dispute; and whether he is able to give the arbitration the time and attention required. He may also respond to enquiries from those approaching him, provided that such enquiries are designed to determine his suitability and availability for the appointment and provided that the merits of the case are not discussed.
- 5.2 Throughout the arbitral proceedings, an Arbitrator should avoid any unilateral communications regarding the case with any party, or its representatives. If such communication should occur, the Arbitrator should inform the other parties of its substance.
- 5.3 An Arbitrator should not accept any gift or hospitality, directly, from any part to the arbitration. An Arbitrator should be meticulous in avoiding significant social or professional contacts with any party to the arbitration other than in the presence of other parties.

6. Duty of Diligence

An Arbitrator should devote such time and attention as the parties may reasonably require having regard to all the circumstances of the case, and shall do his best to conduct the arbitration in such a manner that costs do not rise to an unreasonable proportion of the interests at stake.

7. Confidentiality of the Deliberations

The deliberations of the Arbitrator, and the contents of the award itself, remain confidential in perpetuity unless the parties release the Arbitrator from his obligation.

8. Costs

Costs of the reference shall be in accordance with the NCC schedule of fees and expenses.

9. Award

- (a) Any award made by the arbitrator or arbitral tribunal, shall be in writing and signed by the arbitrator or arbitrators.
- (b) Where the arbitral tribunal comprises of more than one arbitrator, the signatures of a majority of all the members of the arbitral tribunal shall suffice if the reason for the absence of any signature is stated.
- (c) The arbitral tribunal shall state on the award ;
 - i. the reasons upon which it is based, unless the parties have agreed otherwise
 - ii. the date it was made; and
 - iii. the place of the arbitration
- (d) A copy of the award, made and signed by the arbitrators in accordance with paragraphs (a) and (b) of this section shall be delivered to each party.

10. Procedure

An Arbitrator should adopt a procedure in which to run the arbitration which is in accordance with the wishes of the parties. If the parties are unable to agree a procedure, the Arbitrator should set the procedure. The procedure should be such as to resolve the dispute quickly, efficiently and economically.

11. Cancellation Fees

- 11.1 Cancellation charges are intended to compensate the Arbitrator for any loss likely to be suffered as result of time set aside for hearing not being required and for the inconvenience caused by cancellations. The Arbitrator should make full allowance for the possibility of mitigating his loss with respect to such charges.

12. Retention of Documents

An Arbitrator should adopt the following policy:

1. Original documents – offer to return them to the relevant party or solicitor at the end of the period for appeal against the award plus one month;
2. Photocopied documents – as for original documents;
3. Correspondence relating to the appointment, the pleading, directions, proofs of evidence and documents relating to the calculation of fees, these should be retained for six months for a straightforward case and for up to seven years for a complex case;
4. Notes of the arbitration and the report of any assessor- these should be retained for up to seven years;
5. The award – this should be retained indefinitely.

CODE OF ETHICAL CONDUCT

Rule One

An Arbitrator has an overriding obligation to act fairly and impartially as between the parties, at all stages of the proceedings.

Rule Two

An Arbitrator shall be free from bias and shall disclose any interest or relationship likely to affect his impartially or which might reasonably create an appearance of partiality or bias. This is an ongoing duty and does not cease until the arbitration has concluded. Failure to make such a disclosure itself may create an appearance of bias, and may be a ground for disqualification.

An Arbitrator shall not permit outside pressure, fear of criticism or any form of self interest to affect his decisions. An Arbitrator shall decide all the issues submitted for determination after careful deliberation and the exercise of his own impartial judgment.

An Arbitrator in communicating with the parties shall avoid impropriety or the appearance of impropriety. There shall be no private communications between an arbitrator and any party, regarding substantive issues in the case. All communication,

other than proceedings at a hearing, should be in writing. Any correspondence shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute, without the agreement of the parties.

An arbitrator shall not accept any gift or substantial hospitality, directly or indirectly, from any party to the arbitration, except in the presence of the other parties and/or with their consent.

Rule Three

An Arbitrator shall only accept an appointment if he has suitable experience and ability for the case and available time to proceed with the arbitration.

Rule Four

An Arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.

Rule Five

An Arbitrator's fees and expenses shall be in accordance with the NCC schedule of fees and expenses.

Rule Six

Arbitrators may publicize their expertise and experience but shall not actively solicit appointment as Arbitrators.