



**NIGERIAN INSTITUTE OF  
CHARTERED ARBITRATORS™**

*"a registered mark of the Chartered Institute  
of Arbitrators Nigeria Ltd/Gte, RC: 115730"*  
*...Promoting ADR Since 1979*

**NICARB ARBITRATION AND  
ALTERNATIVE DISPUTE RESOLUTION  
CENTRE ARBITRATION RULES  
(NICARB ARBITRATION RULES) 2021**

**NOVEMBER 15, 2021**

## TABLE OF CONTENTS

<b>ARTICLE 1: SCOPE OF APPLICATION AND INTERPRETATION</b>	04
<b>ARTICLE 2: NOTICE AND COMPUTATION OF TIME</b>	05
<b>ARTICLE 3: REQUEST FOR ARBITRATION</b>	05
<b>ARTICLE 4: REPRESENTATION AND ASSISTANCE</b>	06
<b>ARTICLE 5: RESPONSE TO THE REQUEST FOR ARBITRATION</b>	06
<b>ARTICLE 6: JOINER OF ADDITIONAL PARTIES</b>	06
<b>ARTICLE 7: NUMBER, APPOINTMENT AND CONFIRMATION OF ARBITRATORS</b>	07
<b>ARTICLE 8: SOLE ARBITRATOR</b>	08
<b>ARTICLE 9: THREE ARBITRATORS</b>	08
<b>ARTICLE 10: APPOINTMENT OF ARBITRATOR(S) IN MULTI-PARTY ARBITRATION</b>	08
<b>ARTICLE 11: ARBITRAL SECRETARY</b>	09
<b>ARTICLE 12: EMERGENCY ARBITRATOR</b>	10
<b>ARTICLE 13: INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS</b>	11

<b>ARTICLE 14: CHALLENGE OF ARBITRATORS</b>	12
<b>ARTICLE 15: NOTICE OF CHALLENGE</b>	12
<b>ARTICLE 16: DECISION ON CHALLENGE</b>	12
<b>ARTICLE 17: REPLACEMENT OF AN ARBITRATOR</b>	13
<b>ARTICLE 18: CONDUCT OF THE PROCEEDINGS</b>	13
<b>ARTICLE 19: SUBMISSION OF WRITTEN STATEMENTS AND DOCUMENTS</b>	14
<b>ARTICLE 20: MEMORANDUM OF ISSUES</b>	15
<b>ARTICLE 21: PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL</b>	15
<b>ARTICLE 22: SEAT OF ARBITRATION</b>	16
<b>ARTICLE 23: LANGUAGE OF ARBITRATION</b>	16
<b>ARTICLE 24: HEARINGS</b>	16
<b>ARTICLE 25: WITNESSES</b>	17
<b>ARTICLE 26: INTERIM AND CONSERVATORY MEASURES</b>	18
<b>ARTICLE 27: TRIBUNAL-APPOINTED EXPERTS</b>	18
<b>ARTICLE 28: CLOSURE OF HEARINGS</b>	19
<b>ARTICLE 29: FORM AND EFFECT OF THE AWARD</b>	19
<b>ARTICLE 30: SETTLEMENT OR OTHER GROUNDS FOR TERMINATION</b>	20
<b>ARTICLE 31: CORRECTION OF AWARDS AND ADDITIONAL AWARDS</b>	20
<b>ARTICLE 32: APPLICABLE LAW, AMIABLE COMPOSITEUR ..</b>	21

<b>ARTICLE 32: APPLICABLE LAW, AMIABLE COMPOSITEUR ..</b>	21
<b>ARTICLE 33: FEES AND DEPOSITS ARTICLE</b>	21
<b>ARTICLE 34: COST OF ARBITRATION</b>	22
<b>ARTICLE 35: PARTIES' LEGAL COSTS</b>	22
<b>ARTICLE 36: LAW OF THE ARBITRATION</b>	23
<b>ARTICLE 37: EXCLUSION OF LIABILITY</b>	23
<b>ARTICLE 38: CONFIDENTIALITY</b>	23
<b>ARTICLE 39: MISCELLANEOUS GUIDANCE RULES ON VIRTUAL ARBITRAL PROCEEDINGS</b>	23
<b>ARTICLE 1. AGREEMENT TO RESOLVE THE DISPUTE VIRTUALLY</b>	25
<b>ARTICLE 2. ORDER FOR VIRTUAL HEARING</b>	25
<b>ARTICLE 3. COMMENCEMENT OF PROCEEDINGS</b>	25
<b>ARTICLE 4. HEARING RECORDS AND RECORDING</b>	27
<b>ARTICLE 5. TECHNICAL ASPECTS</b>	27
<b>ARTICLE 6. WITNESSES AND EXHIBITS:</b>	30
<b>ARTICLE 7. HEARING, SCHEDULE &amp; LOGISTICS:</b>	31
<b>ARTICLE 8. TECHNICAL FAILURE:</b>	31
<b>ARTICLE 9. COSTS OF VIRTUAL HEARINGS:</b>	32
<b>ARTICLE 10: POST-HEARING PROCEEDINGS</b>	32
<b>ARTICLE 11: FINAL AWARD</b>	33
<b>SCALE OF FEE</b>	34

## ARTICLE 1: — SCOPE OF APPLICATION AND INTERPRETATION

1. Where parties have agreed to refer their disputes to the Nigerian Institute of Chartered Arbitrators (NICArb), a registered trade mark of Chartered Institute of Arbitrators, Nigeria, for arbitration, the parties shall be deemed to have agreed that the arbitration be conducted and administered in accordance with NICArb Arbitration and Alternative Dispute Resolution Centre Rules (AADRC Rules), subject to modifications as the parties may agree in writing. If any of these rules is in conflict with a mandatory provision of the applicable law of the arbitration from which the parties cannot derogate, that provision shall prevail.
2. Where the parties to a contract have incorporated the model arbitration clause of the Institute, or have agreed in writing that their dispute be referred to the Institute, the AADRC Rules shall apply in the administration and conduct of the reference and the President, through the Registrar, as the Chief Executive and appointing authority, shall, unless otherwise provided in these Rules, exercise all powers conferred on the Institute.
3. The Rules include the 2020 Guidance Rules on Virtual Arbitral Proceedings.
4. The Rules include the Table of Administrative Charges of the Centre and Table of Arbitrators' Fees in effect at the commencement of the arbitration.
5. In these Rules-

"Award" means a decision of the tribunal on the substance of the dispute and includes an interim, interlocutory, partial or final award.

"Centre" means NICArb's Arbitration and Alternative Dispute Resolution Centre

"Institute" means the Nigerian Institute of Chartered Arbitrators (NICArb) a registered trade mark of the Chartered Institute of Arbitrators, Nigeria, No. 10, Adedeji Adekola Close, off Freedom Way, Lekki Phase 1, Lekki, Lagos State, Nigeria. Website: [www.nicarb.org](http://www.nicarb.org)

"Chief Operating Officer" means the Chief Operating Officer of the Institute.

"President" means the President and Chairman of the Governing Council of the Institute.

"Registrar" means the Registrar of the Institute, who shall also be the Registrar of the Centre.

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one is appointed.

## ARTICLE 2: — NOTICE AND COMPUTATION OF TIME

- 2.1 For the purposes of these Rules, any notice, communication or proposal, shall be in writing. Any such written communication may be delivered or sent by a registered postal or courier service or transmitted by any form of electronic communication, including electronic mail, facsimile and telex or delivered by any means that provides a record of delivery. It is deemed to have been received if it is delivered to the addressee personally or if it is delivered to his/her habitual residence, place of business or mailing address. If none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business.
- 2.2 The notice, communication, or proposal is deemed to have been received on the day it is delivered.
- 2.3 For the purposes of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is received. If the last day of such a period is an official holiday, the period is extended until the first business day which follows. Official holidays occurring during the running of the period of time are included in calculating the period

## ARTICLE 3: — REQUEST FOR ARBITRATION

- 3.1 The party wishing to commence arbitration under these Rules (“Claimant”) shall submit to the President, through the Registrar and the other party (“Respondent”) a request for the arbitration, which shall include or be accompanied by the following:
- a. a demand that the dispute be referred to arbitration;
  - b. the names, addresses, telephone numbers, and electronic mail addresses, if known, of the parties to the arbitration and their representatives, if any;
  - c. a reference to the arbitration clause or the separate arbitration agreement that is invoked and a copy of the contract out of or in relation to which the dispute arises; or, in the absence of such contract, a brief description of the relevant relationship;
  - d. a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed, and where possible a quantification of the amount involved;
  - e. a statement of any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the claimant wishes to make a proposal;
  - f. the relief or remedy sought;
- 3.2 The Request for Arbitration may also include:
- a. the proposal as to the number of arbitrator(s), if this is not specified in the arbitration agreement;
  - b. the nomination of arbitrator(s); and
  - c. the Statement of Claim referred to in article 19.

- 3.3 The Request for Arbitration (including all accompanying documents) may be submitted to the President, through the Registrar in electronic form or otherwise.
- 3.4 The date of receipt of the Request for Arbitration by the President, through the Registrar shall be deemed the date of commencement of arbitration.

#### **ARTICLE 4: — REPRESENTATION AND ASSISTANCE**

- 4.1 The parties may be represented or assisted by legal practitioner(s) or any other person(s) of their choice. The names and addresses of such persons must be communicated to the arbitral tribunal and to the other parties, such communication must specify whether the appointment is being made for purposes of representation or assistance.
- 4.2 Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine

#### **ARTICLE 5: — RESPONSE TO THE REQUEST FOR ARBITRATION**

- 5.1 The Respondent shall send a response within 14 days of receipt of Request for Arbitration, which shall contain:
- a. a confirmation or denial of all or part of the claims;
  - b. a brief statement of the nature, circumstances and quantification, if any, of any envisaged counterclaims; and
  - c. any comment in response to any statement contained in the Request for Arbitration under article 3 on matters relating to the conduct of the arbitration.
- 5.2 The Response may also include;
- a. any comment to any proposal or nomination referred to in article 3.2; and
  - b. the nomination of an arbitrator.
- 5.3 The Respondent shall send the Response to the President, through the Registrar and shall confirm that a copy has been served or will be served on the Claimant.

#### **ARTICLE 6: — JOINDER OF ADDITIONAL PARTIES**

- 6.1 A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the “Request for Joinder”) to the Registrar. The date on which the Request for Joinder is received by the Registrar shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. Any such

joinder shall be subject to the provisions of articles 6(3)– (4) of these Rules. Unless all parties, including the additional party, otherwise agree or as provided under these Rules, no additional party may be joined after the confirmation or appointment of any arbitrator. The Registrar may fix a time limit for the submission of a Request for Joinder.

- 6.2 The Request for Joinder shall contain the following information:
- a) the case reference of the existing arbitration;
  - b) the name in full, description, address and other contact details of each of the parties, including the additional party; and
  - c) the information specified in article 3.1, subparagraphs (b)– (g)
- 6.3 The party filing the Request for Joinder may submit therewith such other documents or information as it considers appropriate or as may contribute to the efficient resolution of the dispute.
- 6.4 The provisions of article 3.1 shall apply, *mutatis mutandis*, to the Request for Joinder.
- 6.5 The additional party shall submit an Answer in accordance, *mutatis mutandis*, with the provisions of article 5(1)– (2). The additional party may make claims against any other party.
- 6.6 Any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party accepting the constitution of the arbitral tribunal. In deciding on such a Request for Joinder, the arbitral tribunal shall take into account all relevant circumstances, which may include whether the arbitral tribunal has *prima facie* jurisdiction over the additional party, the timing of the Request for Joinder, possible conflict of interests and the impact of the joinder on the arbitral procedure. Any decision to join an additional party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that party.

## **ARTICLE 7: — NUMBER, APPOINTMENT AND CONFIRMATION OF ARBITRATORS**

- 7.1 Unless the parties have agreed otherwise or unless it appears to the President, through the Registrar, giving due regard to any proposals by the parties, the complexity, the quantum involved or other relevant circumstances of the dispute, that the dispute warrants the appointment of three arbitrators, a sole arbitrator shall be appointed.
- 7.2 If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person(s) including the arbitrators already appointed, that agreement shall be treated as an agreement to nominate an arbitrator under these Rules.
- 7.3 The terms of appointment of the arbitrator(s) shall be fixed by the President,



through the Registrar in accordance with these Rules and Practice Notes for the time being in force.

- 7.4 In all cases, an arbitrator shall not be deemed appointed until confirmed by the Registrar. He shall confirm an arbitrator as soon as practicable upon the arbitrator accepting his appointment in writing.

### **ARTICLE 8: — SOLE ARBITRATOR**

- 8.1 If a sole arbitrator is to be appointed by parties as agreed in writing, either party may propose to the other the name(s) of one or more persons, one of whom serves as the sole arbitrator. On the other hand, a sole arbitrator shall be appointed by the President, through Registrar if the parties' arbitration agreement is silent on the mode of appointment.
- 8.2 If within 21 days after receipt by the President, through the Registrar of the Request for Arbitration made in accordance with article 3, the parties have not reached an agreement on the nomination of a sole arbitrator, the President, through the Registrar shall make the appointment as soon as practicable.
- 8.3 A decision of the Registrar under this article shall not be subject to appeal.

### **ARTICLE 9: — THREE ARBITRATORS**

- 9.1 If three arbitrators are to be appointed as agreed in writing, each party shall nominate one arbitrator. The third arbitrator, who will act as the presiding arbitrator, shall be appointed by the Registrar.
- 9.2 Where the parties have agreed in writing that the party appointed arbitrators shall appoint the third and presiding arbitrator and the two appointed arbitrators fails to do so within 21 days of the second appointment, the President, through the Registrar shall appoint the third and presiding Arbitrator
- 9.3 If within 21 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 President, through the Registrar 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 and with the requisite expertise.

### **ARTICLE 10: — APPOINTMENT OF ARBITRATOR(S) IN MULTI-PARTY ARBITRATION**

- 10.1 Where there are more than 2 parties in the arbitration, the parties may agree on the procedure for appointment of arbitrators.
- 10.2 If the parties are unable to agree on the procedure for appointment of

arbitrators within 21 days of receipt of the Request for arbitration, or if the agreed procedure fails, the arbitrator(s) shall be appointed by the President, through the Registrar as soon as practicable.

- 10.3 A decision of the President, through the Registrar under this Article shall not be subject to appeal.
- 10.4 Where the parties have agreed that any arbitrator is to be appointed by any third person named as an appointing authority, that agreement shall be treated as an agreement to nominate an arbitrator. The Registrar may refuse to appoint any such nominee if it determines that such nominee is not suitable or likely to be independent or impartial, in which event the Registrar shall make an alternative appointment.
- 10.5 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.
- 10.6 The provisions of articles 8 and 9, dealing with the appointment of one or more arbitrators, shall apply as necessary to the provisions of this article.

## ARTICLE 11: — ARBITRAL SECRETARY

### 11.1 Appointment and removal

An arbitral secretary will be appointed for an arbitral tribunal at any stage of the arbitration upon consultation with the parties. Before putting forward the name of the appointed arbitral secretary, the arbitral tribunal upon receipt of the name and resume of such arbitral secretary from the Registrar, shall consider whether the person so appointed is competent and suitable for the case.

- 11.2 Before the confirmation of an appointment of an arbitral secretary, the Registrar will inform the arbitral tribunal of the following:
- a) The proposed candidate's name and resume(not more than three pages);
  - b) candidate's signed declaration of independence, impartiality and non disclosure/confidentiality;
  - c) any disclosure regarding the candidate's independence and impartiality;
- 11.3. The arbitral tribunal shall only proceed with the appointment of the proposed arbitral secretary upon the agreement of the parties or non-contest of the appointment of the arbitral secretary by the parties. Throughout the arbitration proceedings, any changes to the arbitral secretary's terms of engagement or availability should be made with the parties' agreement only.
- 11.4 The arbitral secretary is under the same obligation as the arbitral tribunal on independence, impartiality and confidentiality and these obligations runs

through from the point of appointment till after the Award is published. Therefore if the arbitral secretary comes into the knowledge or possession of facts that may hinder such person's impartiality or independence or compromise on confidentiality, such facts must be disclosed immediately. Where it is not disclosed, the Registrar or the arbitral tribunal, on discovering such fact, can terminate the appointment of the arbitral secretary.

- 11.5. The arbitral secretary would provide the following services which may be reduced or expanded subject to the arbitral tribunal with the consent of the parties:
- a) provide administrative assistance;
  - b) summarise and/or research factual and legal issues in the proceedings;
  - c) prepare drafts of procedural orders and non-substantive parts of awards.
- 11.6. The arbitral secretary must not perform any decision-making functions including but not restricted to the reasoning or operative part of the arbitral Award.
- 11.7 Payment for the arbitral secretary registrar shall be determined by the Registrar based on the value of the claim but shall not exceed 2.5% of the total value of the claim in the arbitration matter.

## **ARTICLE 12: — EMERGENCY ARBITRATOR**

- 12.1 A party that needs urgent or emergency interim or conservatory measures that cannot await the constitution of an arbitral tribunal may apply to the President through the Registrar for an emergency arbitrator to be appointed provided that such Request is made prior to the constitution of an arbitral panel. The application for such interim relief can be made together or separately from the filing of the Notice of Arbitration but before the constitution of the arbitral tribunal. The party applying for the appointment of an emergency arbitrator must send a copy of the application to all parties at the same time with the filing. Such application should include:
- (a) The nature of the relief sought to be brought before the emergency arbitrator;
  - (b) The reason why an emergency arbitrator is to be appointed or needed by the applying party;
  - (c) Statement showing the notification to all parties of the appointment of an emergency arbitrator within 72 hours of the application for an emergency arbitrator.
  - (d) An undertaking that all parties have been served the application for the appointment of an emergency arbitrator or statement on the steps being taken by the applying party to inform the other parties within 48 hours of the application for an emergency arbitrator.

- 12.2 Any application for emergency arbitrator shall be accompanied by the payment of the non-refundable administration fee and the requisite deposits towards the Emergency Arbitrator's fees and expenses for proceedings. The Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as being abandoned.
- 12.3 The President shall make the appointment of the emergency arbitrator within 48 hours of the confirmation from the Registrar that all documents stated in 12.1 above have been received by the Centre.
- 12.4 The Rules applicable to arbitrators under these Rules apply to the emergency arbitrator as well except the use of an arbitral secretary shall be at the discretion of the Registrar who will determine whether given the exigencies of time and the complexity of the matter, an arbitral secretary will be necessary. All other requirements on independence, confidentiality and impartiality that applies to arbitrators appointed or conducting arbitral proceedings under these Rules shall apply to the emergency arbitrator.
- 12.5 Before accepting the appointment, the proposed Emergency Arbitrator must disclose to the Registrar any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within seven days of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.
- 12.6 The Emergency Arbitrator shall make his or her interim order or Award within 21 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. The Registrar must approve the form of the interim order or Award before same is published by the Emergency Arbitrator and given to the parties. The Emergency Arbitrator's power ends once the Tribunal is constituted. The Tribunal may modify, reconsider or entirely vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his or her own jurisdiction. The Tribunal is also not bound by the reasons given by the Emergency Arbitrator.
- 12.7 The Emergency Arbitrator Provisions shall not apply if:
- a) the parties have agreed to opt out of the Emergency Arbitrator proceedings; or
  - b) the arbitration agreement upon which the application is based arises from a treaty.

### **ARTICLE 13:--- INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS**

- 13.1 In confirming or making an appointment under these Rules, the President shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such consideration as are likely to secure the appointment of an independent and impartial arbitrator.

- 13.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible nomination/ appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence
- 13.3 An arbitrator, once appointed, shall disclose any such circumstance referred to in article 13.2 above to all parties, who have not already been informed by him, of these circumstances. Any arbitrator, whether or not nominated by the parties, conducting an arbitration under these Rules shall be and remain at all times independent and impartial and shall not act as advocate for any party.

#### **ARTICLE 14: — CHALLENGE OF ARBITRATORS**

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

#### **ARTICLE 15: — NOTICE OF CHALLENGE**

- 15.1 A party who intends to challenge an arbitrator shall send a notice of challenge within 14 days after the receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstance mentioned in article 13.2 or 13.3 became known to that party.
- 15.2 The notice of challenge shall be filed with the President, through the Registrar and shall be sent simultaneously to the other party. The notice of challenge shall be in writing and shall state the reasons for the challenge. The Registrar may order a suspension of the arbitration until the challenge is resolved.
- 15.3 When an arbitrator is challenged by one party, the other party may agree to the challenge. The challenged arbitrator may also withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 15.4 In both cases the procedure provided in the preceding articles 8 and 9 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 16: — DECISION ON CHALLENGE**

- 16.1 If the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw within 7 days of receipt of the notice of challenge, the Registrar shall decide on the challenge or, where the initial appointment was made by an appointing authority, the challenge shall be decided by that authority.
- 16.2 If the Registrar or the appointing authority sustains the challenge, a

substitute arbitrator shall be appointed or chosen pursuant to articles 7-10 of these Rules.

- 16.3 If the Registrar or the appointing authority dismisses the challenge, the arbitrator shall continue with the arbitration.
- 16.4 The Registrar's or appointing authority's decision made under this Article shall not be subject to appeal.

### **ARTICLE 17: — REPLACEMENT OF AN ARBITRATOR**

- 17.1 In the event of the death or incapacity due to ill-health or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the appointment of the arbitrator being replaced.
- 17.2 In the event that an arbitrator refuses or fails to act or in the event of de jure or de facto impossibility of him performing his functions, the procedure for challenge and replacement of an arbitrator provided in articles 15 and 16 shall apply.
- 17.3 If under the preceding articles the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator in a three-man panel is replaced, such prior hearings may be repeated at the discretion of the Arbitral Tribunal.

### **ARTICLE 18:--- CONDUCT OF THE PROCEEDINGS**

- 18.1 The parties may agree on the arbitral procedure and computation of time in serving pleadings and other documents.
- 18.2 In the absence of procedural rules agreed on by the parties or contained in these Rules, the Tribunal shall conduct the arbitration in such manner as it considers appropriate to ensure the fair, expeditious, economical and final determination of the dispute.
- 18.3 At an early stage of the arbitration proceedings and in consultation with the parties, the Arbitral Tribunal shall prepare a provisional timetable by way of an order of direction for the arbitration proceedings, which timetable shall be provided to the parties and to the Registrar.
- 18.4 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 only on the basis of documents and other materials.
- 18.5 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 Registrar.

- 18.6 The rules and regulations with respect to data protection and cyber security applicable within and under the Laws of the Federal Republic of Nigeria, as at the date of the Notice of Arbitration or the commencement of arbitration under these Rules shall be applicable to all proceedings conducted under these Rules. The only exception shall be where parties have agreed to a different set of rules to apply to data protection and cyber security with respect to such parties' matter.

## **ARTICLE 19: — SUBMISSION OF WRITTEN STATEMENTS AND DOCUMENTS**

- 19.1 Unless the parties have agreed otherwise under article 18 or the Tribunal determines otherwise, the submission of Statement of Claim, Statement of Defence, Counter Claim, Reply to Counter Claim and other documents shall proceed as set out in this article.
- 19.2 Copies of all written statements referred to in this article shall be sent simultaneously to the Registrar, the Arbitral Tribunal and all parties in the matter.
- 19.3 The Claimant shall, if it has not done so, send to the Respondent a statement of claim setting out in full details the facts and any contention of law on which it relies, and the relief claimed together with the amount of all quantifiable claims within 20 days of receipt of notice from the Registrar that the Tribunal has been constituted.
- 19.4 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(s) or remedy(s) sought.
  - (e) 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.
- 19.5 The Respondent shall send to the Claimant a Statement of Defence stating in full detail the fact and contention of law in the Statement of Claim he admits or denies, the grounds, and the other facts and contention of law it relies.
- 19.6 The Statement of Defence shall be submitted within 15 days of receipt of the Statement of Claim or, where the Statement of Claim was submitted with the Request for Arbitration, 20 days of receipt of notice from the Registrar that the Tribunal has been constituted.
- 19.7 Any Counterclaim shall be submitted with the Statement of Defence.
- 19.8 The Tribunal shall decide which further written statement, in addition to the Statement of Claim, Statement of Defence, Counterclaim and Reply to Counterclaim, shall be required from the parties or may be presented by

them. The Tribunal shall fix the periods of time for communicating such statements.

- 19.9 The period of time fixed by the Tribunal for the submission of a written statement shall not exceed 30 days. However, the Tribunal may extend the time limits on such terms as it deems appropriate.
- 19.10 All written statements referred to in this article shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.
- 19.11 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 agreement.
- 19.12 If the Claimant fails, within the time specified under these Rules or as may be fixed by the Tribunal, to submit its written Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings or make such other direction as may be appropriate.
- 19.14 If the Respondent fails to submit a Statement of Defence or, if at any point, any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration.

## **ARTICLE 20: — MEMORANDUM OF ISSUES**

- 20.1 Within 15 days following completion of the submission of the written statements specified in article 19, the Tribunal shall on the basis of the parties' written statements and in consultation with the parties proceed to draw up a document defining the issues to be determined by the Tribunal in the arbitration (“Memorandum of issues”).

## **ARTICLE 21: — PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL**

- 21.1 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.
- 21.2 The Arbitral Tribunal shall have the power to rule on any objection that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- 21.3 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 these Rule, an arbitration clause which forms part of a contract



and which provides for arbitration under these 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.

- 21.4 A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than 15 days of the receipt of the Statement of Claim in the Statement of Defence or, with respect to a Counterclaim, in the Reply to the Counterclaim.
- 21.5 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 its Final Award.

## **ARTICLE 22: — SEAT OF ARBITRATION**

- 22.1 The parties may agree on the seat of arbitration. Failing such an agreement, the seat of arbitration shall be Lagos, Nigeria, unless the Registrar determines, having regard to all the circumstances of the case, that another seat is more appropriate.
- 22.2 The Tribunal may hold hearings and meetings at NICArb's Hearing Room or by any means it considers expedient or appropriate and at any location it considers convenient or appropriate.
- 22.3 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.

## **ARTICLE 23:--- LANGUAGE OF ARBITRATION**

- 23.1 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.
- 23.2 The Arbitral Tribunal may order that any documents annexed to the pleadings 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.

## **ARTICLE 24: — HEARINGS**

- 24.1 Unless the parties have agreed on documents-only arbitration, the Tribunal shall, if either party so requests, hold a hearing for the presentation of evidence or for oral submission.
- 24.2 The Tribunal shall fix the date, time and place of any meeting and hearing in the arbitration and shall give the parties reasonable notice.

- 24.3 If any party to the proceeding fails to appear at a hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the award based on the submissions and evidence before it, provided that due notice was given to the defaulting party.
- 24.4 Unless the parties agree otherwise, all meetings and hearings shall be in private.
- 24.5 The Tribunal may declare the hearing closed if it is satisfied that the parties have no further evidence to produce or submission to make. The Tribunal may on its own motion or upon application of a party, but before any award is made, reopen the hearings.
- 24.6 All statements, documents or other information supplied to the Tribunal by one party shall simultaneously be communicated to the other party and the Registrar. Any Expert report or evidentiary document on which the Tribunal may rely in making its decision shall be communicated to the parties and the Registrar.

## ARTICLE 25: — WITNESSES

- 25.1 Before any hearing, the Tribunal may require any party to give notice of the identity of witnesses, the subject matter of their testimony and its relevance to the issues.
- 25.2 The Tribunal has discretion to allow, refuse or limit the appearance of witnesses.
- 25.3 Any witness who gives oral evidence may be questioned by each of the parties, their representatives or the Tribunal.
- 25.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording.
- 25.5 Subject to article 24.2 any party may request that such a witness should attend for oral examination. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, disregard it or exclude it altogether.
- 25.6 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.
- 25.7 The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
- 25.8 Subject to the mandatory provisions of any applicable law, it shall be proper for any party or its representatives to interview any witness or potential witness prior to his appearance at any hearing.

**ARTICLE 26: — INTERIM AND CONSERVATORY MEASURES**

- 26.1 At the request of any party, the Arbitral Tribunal shall have the power, unless otherwise agreed in writing by the parties to:
- (a) 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) order any respondent to a claim or counterclaim 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) order on a provisional basis, subject to final determination in an Award, any relief that the 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) order any claimant or counterclaimant 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 claimant or counterclaimant does not comply with an order to provide security, the Arbitral Tribunal may stay the party's claims or counterclaims or dismiss them in an award.
- 26.2 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.
- 26.3 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.

**ARTICLE 27: — TRIBUNAL-APPOINTED EXPERTS**

- 27.1. The arbitral tribunal 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.
- 27.2. 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.
- 27.3. 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 opinions on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

- 27.4. At the request of either party the expert, after delivery 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 25 shall be applicable to such proceedings.

### **ARTICLE 28: — CLOSURE OF HEARINGS**

- 28.1. 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.
- 28.2. 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.

### **ARTICLE 29: — FORM AND EFFECT OF THE AWARD**

- 29.1. Unless the Registrar extends time or the parties agree otherwise, the Tribunal shall submit the draft award to the Registrar within 30 days from the date on which the Tribunal declares the proceedings closed. The Registrar may suggest modification as to the form of the award only, without affecting the Tribunal's liberty of decision.
- 29.2. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.
- 29.3. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
- 29.4. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 29.5. 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.
- 29.6. An award shall be signed by the arbitrator(s) 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.
- 29.7. The award may be made public only with the consent of all the parties.
- 29.8. The sole arbitrator or the presiding arbitrator shall be responsible for delivering the Award to the Registrar. Copies of the Award signed by the arbitrators shall be communicated to the parties by the Registrar, provided that all costs of the arbitration have been paid to the Institute by the parties or one or more of them.
- 29.9. 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 tribunal shall comply with this requirement within the period of time required by law.

- 29.10 By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay. An award shall be final and binding on the parties from the date it is made.

### **ARTICLE 30: — SETTLEMENT OR OTHER GROUNDS FOR TERMINATION**

- 30.1. 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.
- 30.2. 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 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.
- 30.3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrator, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of the preceding article as regards award shall apply.

### **ARTICLE 31: — CORRECTION OF AWARDS AND ADDITIONAL AWARDS**

- 31.1 Within 30 days of receipt of an award, a party may, by written notice to the Registrar, request the Tribunal to correct in the award any error in the computation, any clerical or typographical error or any error of a similar nature. If the Tribunal considers the request to be justified, it shall make the correction(s) within 30 days of receipt of the request. Any correction, made in the original award or in a separate memorandum, shall constitute part of the award.
- 31.2 The Tribunal may correct any error of the type referred to in this Article on its own initiative within 30 days of the date of the award.
- 31.3 Within 30 days of receipt of the award, a party may by notice to the Registrar and the other party, request the Tribunal to make an additional award as to claim presented in the arbitral proceedings but not dealt with in the award. If the Tribunal considers the request to be justified, it shall make the additional award within 30 days of receipt of the request.
- 31.4 The Registrar may extend the time limits in this article.

- 31.5 The provision of article 28 shall apply mutatis mutandis in the same manner in relation to a correction of an award and to any additional award made.

### **ARTICLE 32: — APPLICABLE LAW, AMIABLE COMPOSITEUR**

- 32.1. 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.
- 32.2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 32.3. 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.

### **ARTICLE 33: — FEES AND DEPOSITS**

- 33.1 The Tribunal's fees and the Institute's fees shall be ascertained in accordance with the NICArb's Schedule of Fees in force at the commencement of the arbitration.
- 33.2 The Registrar shall fix the advance or deposits towards cost of arbitration to cover the fees and expenses of the tribunal and the Institute. Unless the Registrar directs otherwise, such advances and deposits shall be payable by the parties in equal shares within 30 days after the receipt of the request for payment.
- 33.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, a provisional estimate of the cost of the arbitration shall be made by the Registrar. This may be adjusted in light of such information as may subsequently become available.
- 33.4 The Registrar may from time to time direct parties to make further advances or deposits towards cost or expenses of the arbitration incurred or to be incurred on behalf of or for the benefits of the parties.
- 33.5 If the required deposits are not paid in full within 30 days after the receipt of the request, the Registrar 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 Registrar, may order the suspension or termination of the arbitral proceedings.
- 33.6 If a party fails to make the advance or deposits directed, the Tribunal may, following consultation with the Registrar, refuse to hear the claims or counterclaims, whichever is applicable to the non-complying party, although it may proceed to determine the claims or counterclaims by any party who has complied with the order.

- 33.7 If the arbitration is settled or disposed of without a hearing, the cost of arbitration shall be finally determined by the Registrar. The Registrar shall have regards to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or disposed of. In the event that the cost of arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.
- 33.8 Parties are jointly and severally liable for the cost of the arbitration. Any party is free to pay the whole of the advance or deposit towards the cost of the arbitration in respect of the claim or the counterclaim should the other party fail to pay its share. The Tribunal may, in consultation with the Registrar suspend its work should the advance or deposits directed under this Article remain either wholly or in part unpaid.
- 33.9 All advances and deposits shall be made to and held by the Institute. Any interest which may accrue on such deposit(s) shall be retained by the Institute.

### **Article 34: COST OF ARBITRATION**

- 34.1 The Tribunal shall specify in the award, the total amount of the costs of arbitration. Unless the parties have agreed otherwise, the Tribunal shall determine in the award the apportionment of the cost of arbitration among the parties
- 34.2 The term "cost of arbitration" includes;
- a. the Tribunal's fees and expenses;
  - b. the Institute's administrative fees and expenses; and
  - c. the cost of expert advice and other assistance required by the tribunal.
- 34.3 The fees of the Tribunal shall be fixed by the Registrar in accordance with the schedule of fees and the stage of proceedings. In exceptional circumstances and with the written consent of the parties, the Registrar may allow an additional fee over that prescribed in the schedule of fees to be paid to the Tribunal.
- 34.4 The Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be reimbursed in accordance with the Institute's practice notes for the time being in force, duly communicated to the parties.

### **ARTICLE 35: — PARTIES' LEGAL COSTS**

- 35.1 The Tribunal shall have the authority to order in its award that all or a part of the legal or other costs of a party (apart from the cost of the arbitration) be paid by another party based on the prior agreement of the parties.
- 35.2 A certificate signed by the Registrar on the amount of cost shall form part of the award.

**ARTICLE 36: — LAW OF THE ARBITRATION**

36.1 Where the seat of arbitration is Nigeria, the law of the arbitration under these Rules shall be the Arbitration and Conciliation Act (Chapter A18, Laws of the Federation of Nigeria, 2004) or its modification or re-enactment thereof.

**ARTICLE 37: — EXCLUSION OF LIABILITY**

37.1 The Institute and its officers, employees or agents, or any arbitrator shall not be liable for:

- a. negligence for anything done or omitted to be done in the connection with any arbitration conducted under these Rules; and
- b. any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an award.

37.2 The Institute and its officers, employees or agents, or any arbitrator shall not be under any obligation to give evidence in any legal or other proceedings in respect of any arbitration administered by the Institute. No party shall seek to make any officer, employee or agent of the institute, or any arbitrator, a witness in any legal proceedings arising out of the arbitration whether before, during or after the arbitration.

**ARTICLE 38: — CONFIDENTIALITY**

38.1 The parties and the Tribunal shall at all times treat all matters relating to the proceedings and the award as confidential.

38.2 A party or any arbitrator shall not, without the prior written consent of all the parties disclose to a third party any such matter except:

- a. For the purpose of making an application to any court of any state to enforce or challenge the award;
- b. For the purpose of making application to any competent court of any state under the applicable law covering the arbitration.
- c. Pursuant to the order of or a subpoena issued by a court of competent jurisdiction.
- d. To a party's legal or other professional advisor for the purpose of pursuing or enforcing a legal right or claim.
- e. In compliance with the provisions of the law of any state which is binding on the party making the disclosure; or
- f. In compliance with the request or requirement of any regulatory body or other government authority.

**ARTICLE 39: — MISCELLANEOUS**

39.1 A party who knows that any provision of the Arbitration Agreement or the requirements under these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection shall be deemed to have waived its right to object.



- 39.2 The provisions in these Rules shall insofar as they relate to the powers and functions of the Tribunal be interpreted by the Tribunal. All other provisions shall be interpreted by the Registrar.
- 39.3 In all matters not expressly provided for in these Rules, the Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the fair, expeditious and economical conclusion of the arbitration and the enforceability of the award.
- 39.4 The Registrar may from time to time issue Practice Notes to supplement, regulate and implement the Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.
- 39.5 These rules shall be known as the NICArb Arbitration and Alternative Dispute Resolution Centre Arbitration Rules (NICArb Arbitration Rules) or Arbitration Rules of the Nigerian Institute of Chartered Arbitrators.

## MODEL ARBITRATION CLAUSE FOR FUTURE DISPUTES

Where parties to a contract wish to have future disputes referred to arbitration under NICArb Rules, the following clause is recommended:-

*"Any dispute, controversy or claim arising out of or relating to this contract, including any question regarding its breach, validity or termination, shall be referred to and finally resolved by arbitration under NICArb Arbitration and Alternative Dispute Resolution Centre Arbitration Rules or Arbitration Rules of the Nigerian Institute of Chartered Arbitrators, which Rules are deemed to be incorporated by reference to this clause. The number of arbitrators shall be [one or three], and to be appointed by the Institute. 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 [ ]."*

## MODEL ARBITRATION CLAUSE FOR 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 NICArb Rules, the following clause is recommended:

*"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 NICArb's Arbitration and Alternative Dispute Resolution Centre Arbitration Rules or Arbitration Rules of the Nigerian Institute of Chartered Arbitrators. The number of arbitrators shall be [one or three], and to be appointed by the Institute. 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 [ ]."*

## GUIDANCE RULES ON VIRTUAL ARBITRAL PROCEEDINGS

### ARTICLE 1. — AGREEMENT TO RESOLVE THE DISPUTE VIRTUALLY

- A. The parties and the tribunal should agree that the arbitral process, including the hearing, will be conducted virtually, preferably via video conference as it most resembles the working environment typical of arbitral proceedings. Parties and the tribunal should further confirm that the hearing in all virtual proceedings will be deemed to have taken place in the country or city agreed on by the parties as to the place of arbitration.
- B. The parties are encouraged to carry out their own investigation as to the suitability and adequacy of the agreed virtual platform of choice for its proposed use for the virtual hearing, as well as any risks of using the platform including any risks regarding security, privacy or confidentiality. Where the parties agree that a given platform is suitable, they should agree to use it for the hearing.

### ARTICLE 2. — ORDER FOR VIRTUAL HEARING

- A. The tribunal may order that the hearing in this case be conducted virtually in accordance with the procedures set forth below. The tribunal may further confirm that the hearings in all virtual proceedings will be deemed to have taken place in the country or city agreed on by the parties as the place of arbitration.
- B. The tribunal should note any objections to holding the hearing virtually made by the claimant or respondent. Where the tribunal finds, however, that conducting the arbitral proceedings virtually is a reasonable alternative to a physical hearing in light of exceptional circumstances, then proceedings may be initiated or progress virtually.
- C. The tribunal finds that virtual conference technology will provide the parties with a fair and reasonable opportunity to present their cases, save costs and allow the hearing to move forward on the dates previously scheduled instead of postponing the hearing to a future date or indefinitely.

### ARTICLE 3. — COMMENCEMENT OF PROCEEDINGS

- A. As soon as the tribunal has been appointed in accordance with the agreement between the parties or by NICArb, it should formally notify the parties of the appointment via email and request that it be provided with any information that would be required in its preparation of the terms of reference for the arbitration proceedings within three (3) days of receipt of the email.
- B. Within seven (7) days of receipt of the requisite information from the parties, the tribunal should send to the parties a document defining its Terms of Reference for the arbitral proceedings and the Schedule of proceedings.

- C. The Terms of Reference shall include the following particulars:
- i. The names (in full), description, contact addresses, email addresses and other contact details of each of the parties and any person(s) representing a party in the arbitration;
  - ii. The names, contact addresses, email addresses and telephone numbers to which notifications and communications arising in the course of the arbitration should be made to;
  - iii. A summary of the parties' respective claims and the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
  - iv. A list of issues to be determined unless the tribunal considers it inappropriate;
  - v. The names (in full), contact address, email address, telephone numbers and other contact details of the arbitrator(s);
  - vi. The name(s) (in full), contact address, email address and other contact details of the Registrar and/or the Secretary (where appointed) of the tribunal;
  - vii. The seat of the arbitration and particulars of the applicable procedural rules;
  - viii. The arbitration fees and payment schedule for the parties;
  - ix. The schedule for the filing of pleadings by the parties as well as for interim applications including objections, if any;
  - x. The virtual platform to be used by the parties for the proceedings and the hearing proper; and
  - xi. Any other detail deemed necessary by the tribunal or parties.
- D. The Terms of Reference shall be endorsed and adopted by the parties and the tribunal within seven (7) days from the date of receipt, subject to any additions or corrections the parties or tribunal may wish to make therein.
- E. If any of the parties refuse to take part in the drafting of the Terms of Reference or endorse or adopt it, the Terms should be submitted to the President/Chairman of NICArb for approval. When the Terms of Reference have been signed or approved by the President/Chairman of NICArb, the arbitration shall proceed.
- F. All pleadings and accompanying documents should be filed and served by the parties via email on the email address provided by parties under Article 3 (c) (ii) of this Guidance Note and all parties to the proceedings copied in accordance with the Terms of Reference.
- G. All email communication and/or any other written communication by the tribunal or parties should be delivered via the email addresses provided. All parties to the proceedings and any additional contact information or phone numbers provided by the parties under Article 3 (c) (iii) should be copied in the said communication in accordance with the Terms of Reference.

## ARTICLE 4. — HEARING RECORDS AND RECORDING

- A. The parties and tribunal may agree that the Registrar or Secretary of the tribunal will record the hearing. Where no Registrar or Secretary is appointed, the parties may appoint a qualified transcriber to transcribe the records of the proceedings. The parties and tribunal should agree that the records of the Registrar or Secretary (or in the case of an appointed transcriber, the Transcriber's records) will be the official record of the hearing. Regardless of remote attendance, the Registrar, Secretary or Transcriber may interrupt attorneys, witnesses, or the tribunal as needed to clarify items for the record.
- B. The parties and tribunal should agree that the audio and video of the hearing will be recorded through the virtual platform agreed on by the parties under the Terms of Reference. The parties and tribunal should agree that the recording available through the videoconferencing platform will be the official record of the hearing if a Transcriber is not transcribing the hearing. The parties and tribunal should agree that the recording will be made available electronically to all counsel and tribunal members as soon as is practicable at the close of the hearing each day. The tribunal will control when the hearing is on and off the record and will communicate this to the parties immediately.
- C. The parties and counsel should agree that they will not make a record, via audio, video, screenshot, or other means, or permit any other person to record, via any of the means mentioned, the hearing in part or in full, except as is provided for in the Terms of Reference. The parties and counsel should ensure that each additional participant at the hearing for which that party is responsible also acknowledges and agrees to this prohibition of recording.

## ARTICLE 5. — TECHNICAL ASPECTS

- A. **Invitations to Access Hearing:** The Registrar, Secretary, tribunal or Chairman (where there is a tribunal of 3 arbitrators) should invite participants via email to join the hearing via the agreed platform. To ensure the security of the hearing, access to the hearing will be password-protected and limited to authorised participants only. Hearing participants should not forward or share the hearing link or password with any uninvited persons. The parties should circulate to the tribunal a list of each participant's name, e-mail address, and phone number at which they can be reached on the day(s) of the hearing no later than fourteen (14) days to the hearing date. This is to ensure that e-mail invitations or links to the agreed online platform are sent out well in advance of the hearing.
- B. **Advance Testing of System:**
- i. At least one week before the hearing, parties and the tribunal should test the agreed videoconferencing system to ensure that all the invited participants or participants can connect to it and that the audio-visual quality of the agreed platform is adequate. All

- participants should note the camera settings, lighting, delays/time lags, clarity, volume, feedback, and other sound disruptions.
- ii. Each party will be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses that party has subpoenaed, who will be attending virtually as opposed to in the office of the counsel. Each party is also responsible for ensuring that all logistical requirements for the hearing are satisfied.
  - iii. The videoconference should be of sufficient quality to allow for clear video and audio transmission of all participants.
  - iv. Each participant should test their equipment to determine their best audio connection, e.g. whether by phone, through their computer speakers or microphone, and with or without a headset.
- C. **Back-Up Conference Call Line:** The parties and the tribunal should agree on an optional dial-in conference call number to use in case the audio of the device(s) of one or more participants is of poor quality. Parties should ensure that they have exhausted all measures to improve the audio connection, e.g. trying the audio link through the computer with and without a headset and by phone, before using the back-up line.
- D. **Participants at the Hearing:**
- i. Each party should inform the tribunal and all other parties and their counsel of the names of all persons who will attend or otherwise be able to hear any communications in the hearing using the agreed platform (including any technicians assisting the party or counsel) fourteen (14) days before the hearing. The parties may agree that no persons will attend, participate in or otherwise be allowed to listen in on the hearing without the prior consent of all parties and the tribunal.
  - ii. If the tribunal wishes to have a technician present or available to assist them in person, they should communicate to the parties' counsel and the other tribunal members the technician's name and the organization that he/she is affiliated to, if any at least fourteen (14) days before the hearing.
  - iii. Each participant at the virtual hearing should disclose all persons in the room with him/her at the start of each hearing session. Should an individual join the participant after the hearing session has begun, that person should be identified to counsel and the tribunal at the earliest opportunity.
  - iv. During the videoconference, the participants and/or any witness should always be in full view of the camera. If two or more people are attending the hearing from the same location, they should use a single camera, which should be placed in such a way as to provide, to the extent possible, a full view or view of a reasonable part of the room
  - v. At the tribunal's request, unknown participants should identify themselves by showing a piece of identification to the camera or by responding to the tribunal's questions regarding their identities.

- E. Ensuring Good Audio or Video Quality: Participant should make their best efforts to ensure that there will be clear video and audio transmission during the hearing. In this regard, the participants are encouraged to:
- i. Consider steps that may be taken to establish a high-speed internet connection. If possible, a hard-wired internet connection should be used instead of a wireless internet connection;
  - ii. Use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into the audio portion of the platform or if it becomes necessary, use the back-up conference call number if the device and platform audio are of poor quality;
  - iii. Eliminate any background noise;
  - iv. Consider camera positioning and lighting, e.g., avoid sitting near a window and positioning a light in front of, instead of behind, the participant;
  - v. Access the agreed platform via desktop or laptop rather than through a smart phone or tablet;
  - vi. Ensure that devices to be used are adequately charged and that power cables or back-up batteries are available as may be necessary; and
  - vii. Refrain from joining the hearing from a public setting or using unsecured, public Wi-Fi to ensure the privacy and security of the hearing.
- F. All counsel should endeavour to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other participants of technical difficulties.
- G. All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to opening statements, closing arguments, or other arguments, should maintain their audio on mute to limit potential interruptions. The video hearing host and co-host, if any, will also have the ability to mute and unmute any participant if needed.
- H. For each person participating in the videoconference, there should be sufficient microphones to allow for the amplification of the individual's voice, as well as ensure the accurate transcription or recording of the participant's speech as appropriate.
- I. Each participant in the hearing should have access to a computer or other devices with email, and a printer to which the device can print exhibits or other documents, if needed.
- J. Parties are advised to keep important procedural documents in both hard and soft copies signed by participants where necessary. Arbitral awards and other relevant documents should be stored in both hard and soft copies, as some courts may not recognize documents solely produced electronically. Electronic copies can be signed using various digital signature platforms.

**ARTICLE 6. — WITNESSES AND EXHIBITS:**

- A. Except for the parties' corporate representatives and expert witnesses, who may attend the entirety of the hearing, all witnesses are to be sequestered until they testify. Witnesses shall be advised in advance by the party, calling them that their testimony will be recorded.
- B. The parties and the tribunal may consider adopting any of the measures set out below with respect to witness testimonies:
- i. A witness should give evidence sitting at an empty desk or table, and the witness' face should be visible in the video.
  - ii. To the extent possible, the webcam should be positioned at face level, relatively close to the witness.
  - iii. Witnesses may not use a “virtual background.” Instead, the remote venue from which they are testifying must be visible.
  - iv. Witnesses should speak directly to the camera while testifying.
  - v. Witnesses should avoid making quick movements.
  - vi. All non-party or expert witnesses should sign-off from the agreed virtual platform after their testimony has been delivered.
- C. At any time, the tribunal may ask a witness to rotate his or her webcam to provide a 360-degree view of the remote venue in order to confirm that no unauthorised person(s) is present.
- D. The tribunal should instruct each witness about:
- i. What to do in the event of a disconnection or other technical failure; and
  - ii. The impermissibility of any unauthorised observers or recordings of the hearing.
- E. Hearing exhibits:
- i. Before the hearing, counsel should provide each witness with a clean, unannotated hard copy set of exhibits and a copy of his or her unannotated witness statement, if any, to be referred to during the witness' evidence. At any time, the tribunal may ask a witness to display the set of exhibits and/or witness statement and verify that they do not bear any annotations.
  - ii. The parties may agree on using a shared virtual document repository (i.e. a document-sharing or storage server) to be made available electronically at all participants' locations, provided that the parties make their best efforts to ensure the security of the documents. If possible, a separate display screen or window other than the screen or window used to display the video transmission should be used to show and display the relevant documents to the witness during the presentation of direct evidence and cross-examination.

**ARTICLE 7. — HEARING, SCHEDULE & LOGISTICS:**

- A. The hearing should commence on a date and time agreed on by the parties and tribunal with consideration of any difference in time zones. It is recommended that all participants access the virtual hearing room early on each agreed day of the hearing.
- B. The tribunal has the discretion to determine when it is appropriate to have morning, lunch, and afternoon recesses, and the hearing should continue on the next agreed date as may be necessary. The Tribunal may take additional recesses and adjust the hearing schedule, in its discretion, to facilitate a smooth and efficient hearing.
- C. The hearing schedule, and the daily schedule, will take into account that extra time may be needed if there are technical problems that cause delays.
- D. Upon joining the agreed platform for the virtual hearing, participants will be admitted to a virtual Waiting Room if available on the platform. The tribunal will admit all participants to the hearing at the same time. To avoid delay and difficulty in reconnecting, participants should not disconnect from the agreed platform during any recess. However, the tribunal may choose to mute the participants or move them to “break-out” rooms and/or the virtual Waiting Room during this time.
- E. The tribunal should disable the private “chat” function on the agreed platform and instead use a virtual break-out room to confer privately. Additionally, the tribunal may use virtual break-out rooms to facilitate private conversations between other participants as may be appropriate. For example, upon a request to the tribunal, members of a party's legal team may be allowed to discuss with each other directly, outside of the presence of the arbitrator, tribunal and witnesses.

**ARTICLE 8. — TECHNICAL FAILURE:**

- A. Should the internet connection of one party or participant fail, the tribunal should request the counsel remaining on the video conference to mute their audio and to turn off their video to avoid concerns regarding potential ex-parte communications between the tribunal and the counsel who remain connected to the hearing platform. Once the tribunal or arbitrator sees that the dropped participant has rejoined the video conference, the remaining counsel should unmute their audio and turn on their video.
- B. If a participant is disconnected from the videoconference or experiences some other technical issues and connection cannot be re-established within a 5-minute interval:
  - i. The tribunal should take steps to “pause” the hearing, which may include moving participants into a virtual waiting room or one or more separate break-out rooms. The parties should agree to pause proceedings as needed to accommodate any reconnections or technical issues;



- ii. Each participant should e-mail all participants to the hearing by 'replying all' to the agreed platform invitation circulated by the tribunal, and shall monitor his or her e-mail for any further directions from the tribunal. The parties and participants may also use telephone communication to indicate if any party, attorney or witness has disconnected from the hearing due to a connection problem or other technical issue. The Registrar, Secretary or the Technician appointed by the tribunal and the reserved Back-Up Conference Call Line agreed by the parties according to Article 5 (c) of this Guidance Note will be the designated person and number to contact if parties, counsel, or witnesses are disconnected.
- C. The tribunal should reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings if the virtual hearing or videoconferencing system persistently fails to work such that the hearing cannot take place as scheduled; if the tribunal determines that the virtual hearing or videoconferencing system otherwise does not allow the parties to present their cases adequately; or if it would be unfair to any party to continue the hearing virtually.

#### **ARTICLE 9. — COSTS OF VIRTUAL HEARINGS:**

- A. The parties may agree that the costs, if any, of using the agreed platform for the proceedings (including technical support costs incurred during and jointly in preparation of the proceedings) will be divided equally between the Claimant and Respondent.
- B. The parties further agree that the costs aforementioned are to be included in the costs of the arbitration, as specified in the NICArb Arbitration Rules and subject to allocation by the tribunal in any final award.

#### **ARTICLE 10: — POST-HEARING PROCEEDINGS**

- A. At the end of the hearing, parties shall agree on the date and/or time for the final submission in the arbitral proceedings.
- B. The parties and tribunal should agree to have the post-hearing submission virtually via video conference. The proceedings for the final written submission shall be guided by the same rules and procedures applicable to the arbitral hearing under Articles 4, 5, 7 and 8 of this Guidance Note. Or
- C. The parties and tribunal may agree that the final written submissions be filed, served and adopted by parties via email in accordance with the provisions of Article 3 (f) of this Note.
- D. The tribunal will deal with other issues that may arise post-hearing via email, except for issues concerning the recall of a witness or bringing in additional witnesses.

**ARTICLE 11: — FINAL AWARD**

A. The parties and tribunal may agree to have the Final Arbitral Award delivered to them virtually via videoconference. The proceedings for the delivery of the Final Arbitral Award should be guided by the same rules and procedures applicable to the arbitral hearing under Articles 4, 5, 7 and 8 of this Guidance Note.

Or

B. The parties and tribunal may agree that the Final Arbitral Award be delivered to the parties via email in accordance with the provisions of Article 3 (g) of this Guidance Note.

These Rules commence on the *15<sup>th</sup>* day of *Nov.*, 2021

Made and Adopted by the Nigeria Institute of Chartered Arbitrators, a registered Trade Mark of the Chartered Institute of Arbitrators Nigeria, at Lagos, Nigeria.

This *15<sup>th</sup>* day of *Nov.* of 2021



Prof. Fabian Ajogwu, SAN, FCARB  
President & Chairman of the Governing Council



AMOUNT IN DISPUTE (In Naira @ N410.23 to \$1)	AMOUNT IN DISPUTE (In US dollars)	ARBITRATION FEE			ADMINISTRATIVE FEE
		(In US dollars)	MAXIMUM	Amount in Naira @ N410.23 to \$1	
	\$				
Up to 3,750,000	Up to 25,000	14.000% of Amount in Dispute	3,500.00	525,000.00	
3,750,001 to 7,500,000	25,000 to 50,000	3,500.00 + 14.000% of amt. over 25,000	7,000.00	1,050,000.00	20%
7,500,001 to 15,000,000	50,001 to 100,000	7,000.00 + 8.8192% of amt. over 50,000	11,409.60	1,711,440.00	20%
15,000,001 to 30,000,000	100,001 to 200,000	11,409.60 + 5.0148% of amt. over 100,000	16,424.40	2,463,660.00	20%
30,000,001 to 75,000,000	200,001 to 500,000	16,424.40 + 4.4000% of amt. over 200,000	29,624.40	4,443,660.00	20%
75,000,001 to 150,000,000	500,001 to 1,000,000	29,624.40 + 2.6182% of amt. over 500,000	42,715.40	6,407,310.00	20%
150,000,001 to 300,000,000	1,000,001 to 2,000,000	42,715.40 + 2.4000% of amt. over 1,000,000	66,715.40	10,007,310.00	20%
300,000,001 to 750,000,000	2,000,001 to 5,000,000	66,715.40 + 0.5960% of amt. over 2,000,000	84,595.40	12,689,310.00	20%
750,000,001 to 1,500,000,000	5,000,001 to 10,000,000	84,595.40 + 0.4697% of amt. over 5,000,000	109,080.40	16,362,060.00	20%
1,500,000,001 to 4,500,000,000	10,000,001 to 30,000,000	109,080.42 + 0.1569% of amt. over 10,000,000	140,460.40	21,069,060.00	20%
4,500,000,001 to 7,500,000,000	30,000,001 to 50,000,000	140,460.40 + 0.1005% of amt. over 30,000,000	160,560.40	24,084,060.00	20%
7,500,000,001 to 12,000,000,000	50,000,001 to 80,000,000	160,560.40 + 0.0870% of amt. over 50,000,000	186,660.40	27,999,060.00	20%
12,000,000,001 to 15,000,000,000	80,000,001 to 100,000,000	186,660.40 + 0.0869% of amt. over 80,000,000	204,040.40	30,606,060.00	20%
15,000,000,001 to 75,000,000,000	100,000,001 to 500,000,000	204,040.40 + 0.0156% of amt. over 100,000,000	266,440.40	39,966,060.00	20%
Over 200,000,000,000	Over 500,000,000	266,440.40 + 0.0200% of amt. over 500,000,000	N/A	N/A	20%



**NIGERIAN INSTITUTE OF  
CHARTERED ARBITRATORS™**

*"a registered mark of the Chartered Institute  
of Arbitrators Nigeria Ltd/Gte, RC: 115730"*

*...Promoting ADR Since 1979*