

JICAM

JANADA INTERNATIONAL CENTRE FOR ARBITRATION & MEDIATION



MEDIATION RULES 2020

© 2020 All rights reserved.
Reproduction is strictly prohibited without written
permission of JICAM.

CONTENT

Preamble

Article 1	Title and Definitions	63
Article 2	Scope of Application	65
Article 3	Commencement	66
Article 4	Appointment of Mediator	68
Article 5	Disclosure	68
Article 6	Replacement of Mediator	70
Article 7	Pre-Mediation Meeting	70
Article 8	The Mediation Agreement	71
Article 9	Conduct of the Mediation	71
Article 10	Representation of Parties	72
Article 11	Role of the Mediator	73
Article 12	Role of the Parties	74
Article 13	Language of the Mediation	75
Article 14	Confidentiality	75
Article 15	Conclusion of the Mediation	77
Article 16	Settlement and Enforcement	78
Article 17	Failure to Settle	79
Article 18	Exclusion of Liability	79
Article 19	Costs	79
Article 20	General Provisions	80

Annexures 81

Appendix I	83
Appendix II	87

PREAMBLE

In recognition of the need to have a set of rules to govern mediation at the JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION, these Rules were passed on the 8th day of July, 2020 to assist in the effective resolution of disputes by mediation and for the proper and expeditious conduct of mediation proceedings and other connected purposes.

Article 1

Title and Definitions

- 1.1 These Guidelines shall be known as the “Mediation Rules of the JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION, 2020”; hereinafter called 'the JICAM Mediation Rules 2020'.
- 1.2 In order to preserve the flexibility of the mediation process, the JICAM Mediation Rules shall not be unduly prescriptive, they should be construed and interpreted in a liberal manner to produce a just, efficient, expeditious and cost-effective process of resolving disputes by mediation between parties.
- 1.3 In these Mediation Rules:
 1. “General Manager” means the General Manager of the JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION.

- ii. "JICAM" means the JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION.
- iii. "List of Mediators" means the list of Panel of Neutrals of the JICAM, containing the names of any person screened and appointed to provide mediation services through a process established by the JICAM.
- iv. "Mediator" means a person whose name is on the List of Mediators of JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION's Panel of Neutrals and who is suitably qualified and experienced in mediation and who has been appointed in accordance with Article 4 of these Rules to act as a mediator. The term includes a sole mediator or a panel made up of two or more mediators.
- v. "Mediation Agreement" means a written agreement wherein parties have agreed to submit all or certain disputes which have arisen or which may arise between them, to mediation. A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement between the parties.
- vi. "Settlement Agreement" means the agreement reached between the parties

at the successful conclusion of the mediation and the expression includes any Heads of Agreement signed by the parties pending the preparation and execution of a properly drawn-up agreement evidencing full details of the agreement reached by the parties during the mediation.

Article 2

Scope of Application

2.1 The JICAM Mediation Rules will apply:

- (a) To the mediation of present or future disputes where parties seek amicable settlement of the disputes, and where either by stipulation in the contract entered into between them or by subsequent agreement, the parties have agreed that the JICAM Mediation Rules shall apply.
- (b) where there is not prior agreement to mediate any dispute between the parties but one of the parties in dispute has requested the JICAM to secure the participation of the other party(ies) to resolve the dispute by mediation.

2.2 Where a mediation agreement provides for mediation under the JICAM Mediation Rules, they shall be deemed to form an

integral part of the mediation agreement and unless the parties agree otherwise, the version of the JICAM Mediation Rules in force on the date when the written request for mediation is filed, shall apply.

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

Article 3.

Commencement

- 3.1 Where the parties jointly agree to settle the dispute under the JICAM Mediation Rules, they shall send a written request for mediation to the GENERAL MANAGER, which shall contain the identity of the parties, the names and contact details of their representatives where relevant and a brief description of the matter in dispute.
- 3.2 If the request for mediation is made by only one of the parties to a prior agreement to settle any dispute in accordance with the JICAM Mediation Rules, that party shall, at the same time that it is filing its request for mediation, send a copy of the request for mediation to the other party.

- 3.3 Where there is no prior agreement between the parties to resolve any dispute to mediation under the JICAM Mediation Rules, either party to the dispute shall send a written request for mediation to the GENERAL MANAGER and the JICAM shall use its best endeavor to ensure the participation of the other party or parties in the mediation process. Where the other party or parties fail to agree to mediation within a reasonable time of being approached by the JICAM, the GENERAL MANAGER shall in writing inform the party who has sent the request for mediation, of the refusal and state that there shall be no mediation under the JICAM Mediation Rules.
- 3.4 All requests for mediation shall be accompanied by a non-refundable registration fee prescribed by the JICAM.
- 3.5 The day the request for mediation is received by the GENERAL MANAGER shall be regarded as the date of commencement of the mediation.
- 3.6 The GENERAL MANAGER shall immediately inform the parties of the date on which the mediation commences, and shall inform the parties of the time limit by which the other party shall pay its share of the fees payable at that time pursuant to Article 3 of these Rules.

Article 4

Appointment

- 4.1 Upon receipt of the request for mediation and payment of the non-refundable registration fee, the GENERAL MANAGER shall invite the parties to appoint the mediator in accordance with these Rules.
- 4.2 If within 7 (seven) days of making such request or such extension of time as deemed necessary by the GENERAL MANAGER, the parties have not agreed to the mediator of their choice from the List of Mediators contained in the list of Panel of Neutrals of the JICAM, the mediator shall be appointed by the President of the JICAM, subject to the parties' objection on grounds of conflict of interest. Provided that nothing in these Rules shall prevent the parties from appointing any other mediator whose name is not on the List of Mediators of the JICAM.

Article 5

Disclosure

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

- 5.2 The mediator shall undertake to be bound by the Conflict of Interest Rules of the JICAM and throughout the mediation process, the mediator shall be impartial, remain independent of the parties and shall disclose to the GENERAL MANAGER any circumstances likely to compromise or raise justifiable doubts as to his or her impartiality or independence with regard to any of the parties.
- 5.3 Upon receipt of any information disclosed, the GENERAL MANAGER shall immediately communicate the information to the parties and request for their reaction thereto.
- 5.4 If the disclosure is made before the mediation sessions commence, any party may raise an objection to the appointment of the proposed mediator who has made the disclosure, within 5 (five) days of being given the disclosed information and that mediator shall not be appointed.
- 5.5 If the disclosure is made after the commencement of the mediation session but before they are concluded, the parties may authorize the mediator to continue with his or her mandate by means of a signed separate or joint declaration of the parties.

Article 6

Replacement of Mediator

In the event of any objection by any of the parties, or in his or her own discretion a mediator resigns or deems him or herself unable to conclude the mediation, the mediator shall cease the mandate and inform the GENERAL MANAGER, who will arrange for the replacement of the mediator after consulting the parties.

Article 7

Pre-Mediation Meeting

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

7.2 Matters to be dealt with at the pre-mediation meeting shall include the form, time and date for exchange of case summaries and key documents between the parties and the mediator through the GENERAL MANAGER; the date, venue and time for the commencement of the mediation and the names, contact details and roles of the persons attending the mediation. Provided that nothing herein shall prevent the pre-mediation meeting from being held by correspondence,

telecommunications or any other means agreed between the parties and the mediator and communicated to the GENERAL MANAGER.

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

Article 8

The Mediation Agreement

After the pre-mediation meeting has been held, the GENERAL MANAGER shall ensure that the parties and the mediator enter into a JICAM Mediation Agreement in the form contained in Appendix 1 attached hereto with such modifications as are agreed between the parties and the mediator, with the approval of the GENERAL MANAGER.

Article 9

Conduct of the Mediation

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

determined by the mediator and agreed by the parties.

- 9.2 The mediator shall prescribe as many mediation sessions as suits the circumstances of the dispute.
- 9.3 The JICAM shall provide the venue to be used for the mediation proceedings, subject to the payment of the hiring rates and other charges of the JICAM, provided that the parties do not agree on a mutually convenient venue for the mediation under the JICAM Mediation Rules within 5 days of the appointment of the mediator.
- 9.4 Any document relied upon by a party and provided to the mediator must immediately be served on the other party unless it is delivered to the mediator confidentially.

Article 10

Representation of Parties

- 10.1 Parties shall be represented at any sitting for the mediation either personally or by proxy, through their counsel or the lawful holders of their power of attorney.
- 10.2 Each party may also appoint one or more other persons including legally qualified persons to assist and advise

them in the mediation and to perform such roles in the mediation as the parties may require.

- 10.3 Where a party is represented at the mediation by proxy or holder of a lawful power of attorney or a party is a corporate body, organization or government agency, ministry or other non-natural persons, that party's representative(s) must be given full authority to settle the dispute and sign the Settlement Agreement on its behalf.
- 10.4 In circumstances where it is not possible for the party's representative to be given full authority to settle; such as where there is need for ministerial approval or board ratification, the party's representatives should be the person(s) with the power to take a final decision or be given the power to take a final decision or be given the power to recommend acceptance of any settlement reached.

Article 11

Role of the Mediator

- 11.1 The mediator shall:
- (a) accept the appointment only if he or she is able to devote sufficient time to the

mediation to ensure its expeditious conduct;

- (b) read the case summaries and documents submitted by the parties and be well prepared for the mediation proceedings; assist the parties to identify the issues in dispute, facilitate communication between the parties and explore possible options for settlement. The mediator shall not make decisions on behalf of the parties or impose any solution on them.

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

Article 12

Role of the Parties

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

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

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

Article 13

Language of the Mediation

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

Article 14

Confidentiality

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

14.2 Except as provided in this JICAM Mediation Rules, all documents, which include anything upon which evidence is

recorded (including tapes and computer discs), or other information produced for and arising out of or in relation to the mediation will be privileged and shall not be admissible as evidence, or discoverable in any administrative proceedings, litigation or arbitration connected with the dispute or any dispute arising out of or in connection with the mediation.

- 14.3 Provided that the provisions of Article 14.1 and 14.2 above shall not apply to information or documents which would in any event, proceedings, litigation or arbitration, or which is necessary to implement and enforce any Settlement agreement entered into at the successful conclusion of the mediation, or to comply with any order of court in any subsequent action.
- 14.4 No recording or transcription of any kind shall be made or any meetings of the parties with the mediator and/or mediation sessions.
- 14.5 None of the parties shall call the mediator as consultant or expert in any litigation or arbitration in relation to the dispute or any dispute arising out of or in connection with the mediation and mediator will not voluntarily act in any such capacity without the prior written

agreement of all the parties.

- 14.6 The parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or to testify in any current or future proceedings as to information disclosed or representations made in the course of the mediation. in the event that any party causes the mediator to be served with a subpoena or other process in violation of this clause, such participant shall pay the mediator's costs, expenses and fees; including attorney's fees, relating to the violation.

Article 15

Conclusion of the Mediation

- 15.1 The mediation may end by:
- (a) the parties settling the disputes in whole or in part and signing a Settlement Agreement;
 - (b) either party giving written notice of termination to the GENERAL MANAGER and the other party at any time before the signing of any Settlement Agreement; a written declaration by the mediator to the GENERAL MANAGER and a copy to the other party that he or she is unable to proceed with the mediation for reasons

disclosed therein which might include the fact that further efforts at mediation will not achieve the resolution of the dispute.

Article 16

Settlement and Enforcement

- 16.1 In the event that any part of or the whole dispute is settled by mediation, the terms of the settlement shall be written down and signed by the parties or their representatives and the mediator. If any counsel has represented the parties, they shall attest the signature of their respective clients.
- 16.2 Unless the parties agree otherwise, the terms of settlement reached at the end of the mediation may be entered as a consent award in an arbitration or consent judgment and enforceable as any award of an arbitral tribunal or judgment of a court, or it may be enforceable as a contract.
- 16.3 Unless otherwise agreed by the parties, any agreement resulting from the mediation may be introduced in evidence in any subsequent proceedings to enforce the terms of the Settlement Agreement.

Article 17

Failure to Settle

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

Article 18

Exclusion of Liability

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

Article 19

Costs

19.1 The costs of the mediation (other than the legal or other costs incurred by the parties themselves) shall be as determined from time to time by the JICAM.

19.2 Each party shall pay the fees fixed by the JICAM within the time limit prescribed by the GENERAL MANAGER.

19.3 Unless otherwise agreed between the parties, the final costs of mediation, which shall include the JICAM fees, the fees of the mediator and the costs of experts and interpreters if any, will be borne by the parties in equal share or in such proportion as agreed by the parties. The GENERAL MANAGER will inform the parties in writing how much is due to be paid by each party.

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

Article 20

General Provision

20.1 The text of these Rules is in the official language of JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION and any other language that it is translated into shall be equally authentic.

20.2 These Rules may be cited as the JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION (JICAM) MEDIATION RULES.

SIGNED

Hon. Justice Ibrahim Ndahi Auta, OFR, FCI Arb. (Rtd)
(Chairman, JICAM Governing Council)

ANNEXURES

(1) **Model Mediation Clause**

Any dispute, controversy or claim out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be submitted to mediation in accordance with the Janada International Centre for Arbitration and Mediation Rules in force on the date when the request for mediation was submitted.

(2) Suggested Clauses for Mediation followed by Arbitration:

- I. Any dispute, controversy or claim out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be submitted to mediation in accordance with the JICAM Mediation Rules in force on the date when the request for mediation was submitted in accordance with these Rules.
- II. If such dispute, controversy or claim has not been fully resolved by mediation within 30 days from the appointment and confirmation of the Mediator, it shall be settled by arbitration in accordance with the JICAM Arbitration Rules.

(3) Suggested Mediation Clauses for Future Dispute:

- I. The undersigned hereby agree to submit to mediation in accordance with the JICAM Mediation Rules.
- II. The seat of the mediation shall be [Abuja, Nigeria] and the hearing will be held at [JICAM], unless the parties agree otherwise.
- III. The Language of the mediation proceedings shall be in [English].

APPENDIX 1

JICAM MEDIATION AGREEMENT

This MEDIATION AGREEMENT is made the
..... Day of20.....

BETWEEN

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

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

(hereinafter collectively called 'the Parties')

AND

Mediator (full names, description and address)
(hereinafter referred to as 'the Mediator').

WHEREAS:

Brief recital of:

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

Participation in the Mediation

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

Representatives of the Parties

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

Claimant:

Respondent:

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

Undertaking

The Mediator:

1. Undertake to conduct the mediation with due diligence in accordance with the JICAM Mediation Rules or such other rule as agreed by the parties and the mediator with the approval of the GENERAL MANAGER of the JICAM provided that the mediator may withdraw from the mediation

upon notice to the participants, if in his or her opinion the mediation cannot successfully resolve the dispute between the parties.

- ii. Shall act as an impartial intermediary and will not act as an advocate for any party.

Indemnity

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

Venue, Date and Time

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

Confidentiality

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

Cost of the Mediation

The parties shall jointly and severally be liable for

the costs of the mediation and parties shall bear their own costs arising out of and /or associated with the mediation proceedings, regardless of the outcome of the mediation.

Representation

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

Signed by the parties:

(Full names of party or representative) —20—

(Full names of party or representative) —20—

APPENDIX 2

JICAM DISCLOSURE FORM AND STATEMENT OF INDEPENDENCE

CASE NO:

IN THE MATTER OF A MEDIATION BETWEEN (APPLICANT) and (RESPONDENT)

1. I hereby state that I have /I do not have any past or present, direct or indirect relationship with any of the parties, whether financial or professional or of any other relationship or any circumstances which may prejudice my duty to assist the parties to resolve the dispute in a fair, just, independent and impartial manner.
2. If any such relationship or circumstance develops or comes to my knowledge during the course of the mediation... it will also be disclosed to the parties and the GENERAL MANAGER of the JANADA INTERNATIONAL CENTRE FOR ARBITRATION AND MEDIATION.
3. Any doubt that I may have in regard to my duty to disclose any fact will be resolved in favour of disclosure.
4. I acknowledge the duty of the GENERAL

