



MTI EAST AFRICA MEDIATION CENTRE

MEDIATION RULES

PREAMBLE

Where any agreement provides for mediation of existing or future disputes under the rules of the Mediation Centre, the parties shall be taken to have agreed that the mediation shall be conducted in accordance with the following rules (the “Rules”). The Rules include the Schedule of Mediation Costs (the “Schedule 1”). Any mediation that takes place pursuant to these Rules will be deemed to take place in MTI E.A Mediation Centers across East Africa., unless specified to the contrary by the parties.

ARTICLE 1: INTRODUCTORY PROVISIONS AND DEFINITIONS

These MTI E.A Mediation Centre Mediation Rules (the Rules) shall apply to all mediations administered by MTI E.A Mediation Centers across East Africa.

In these Rules the following words, phrases and expressions shall have the following meaning:

Additional Mediator Time means any time spent by the Mediator in excess of the time allocated for the Mediation depending on the type of mediation, as more particularly described herein

Business Day means any day that is not a Sunday, Saturday or a declared public holiday in any country in East Africa.

MTI E.A Mediation Centre means MTI E.A Mediation Centers as operated and administered by MTI.E.A

Filing Fee means the initial non-refundable fee payable to MTI E.A Mediation Centre by the Requesting Party upon filing a Request as more particularly described in Schedule 1 to these Rules.

Mediation means any mediation conducted under the auspices of MTI E.A Mediation Centers.

Mediation Fee means the fee payable to MTI E.A Mediation Centre in order for Mediation to proceed. The Mediation Fee includes the Mediator's Fee, registration and administrative fees as more particularly described in Schedule 1.

Mediation Meeting means a meeting between the Parties, which takes place for the purpose of resolving a dispute which is the subject of A Mediation.

Mediator means any person who is appointed and acts as a mediator in any Mediation.

Mediator's Fee is the fee payable to the Mediator appointed by MTI E.A Mediation Centre. MTI E.A Mediation Centre administers the collection and payment of the Mediator's Fee.

Parties means the Requesting Party and any counterparty to the dispute.

Party means either the Requesting Party or counterparty to the dispute.

Requesting Party means the Party who makes the first Request in respect of the dispute between the Parties.

Workplace Mediation means a Mediation in relation to a workplace dispute between a member company and a member company employee or former employee.

MTI E.A Mediation Centre reserves the right to amend the Rules (which include Schedules 1 and 2 of the Rules) at its sole discretion at any time.

ARTICLE 2: COMMENCEMENT OF THE MEDIATION

Any Party who wishes to commence a Mediation under these Rules shall submit a written request for mediation in the form prescribed by MTI E.A Mediation

Centre from time to time (the Request), together with the nonrefundable Filing Fee, without which the Request shall not be registered and the Mediation shall not proceed.

The Request shall set out the nature of the dispute, the value of the claims(s) and the contact details of the Parties to the Mediation.

As the Mediation is a voluntary process, MTI E.A Mediation Centre makes no assurances, representations, or guarantees to the Requesting Party that the counterparty to the Request shall agree to participate in the Mediation. If the Party who is not the Requesting Party does not agree to participate in the Mediation, the Mediation shall not proceed.

ARTICLE 3: APPOINTMENT OF THE MEDIATOR

MTI E.A Mediation Centre shall appoint the Mediator unless otherwise agreed in writing between the Parties and MTI E.A Mediation Centre. Additional fees will apply if the Parties elect to appoint their own Mediator.

MTI E.A Mediation Centre shall appoint a person who, in MTI E.A Mediation Centre's sole discretion, will be best placed to serve as the Mediator.

A person selected as a Mediator will disclose to MTI E.A Mediation Centre any circumstances, which may create an impression of bias in favour of one Party over another Party. Upon receipt of such disclosure, MTI E.A Mediation Centre will appoint another person as the Mediator.

ARTICLE 4: ADMINISTRATION OF THE MEDIATION

MTI E.A Mediation Centre shall make the necessary arrangements for the Mediation, including:

- appointing the Mediator.
- organizing a venue and assigning a date for the Mediation; and providing general administrative support.

ARTICLE 5: POSITION STATEMENTS BY THE PARTIES

In addition to the Request made by the Requesting Party, the Parties shall submit to the Mediator and MTI E.A Mediation Centre no later than five (5) Business Days before the first scheduled Mediation Meeting, a brief written statement summarizing their case, the background to the dispute, and the issues to be resolved (the Position Statement). The Position Statement should be accompanied by copies of any documents to which it refers.

Each Party shall, at the same time, submit a copy of the Position Statement and any supporting documents to the other Party or Parties.

ARTICLE 6: ROLE OF THE MEDIATOR

The Mediator shall promote the settlement of the issues in dispute between the Parties with reasonable care and skill and in a manner which is consistent with mediation best practice.

The Mediator shall have no authority to give advice to, or impose a settlement upon, the Parties.

The Mediator shall abide by MTI E.A Mediation Centre Code of Conduct for Mediators at all times.

Subject to the terms of this Article 6, the Mediator shall conduct the Mediation in the manner he or she sees fit, bearing in mind at all times the circumstances of the case and the wishes of the Parties

ARTICLE 7: CONDUCT OF THE MEDIATION

Each Party shall notify the other Party, the Mediator, and the MTI E.A Mediation Centre of the number and identity of those persons who will attend any Mediation Meeting. Such notification must take place within the timeframe communicated by MTI E.A Mediation Centre to the Parties.

Nothing, which is communicated to the Mediator in private during the course of the Mediation, shall be disclosed to the other Party or Parties without the express consent of the Party making the communication.

All Parties shall act in good faith during the course of the Mediation.

Unless otherwise agreed by the Parties, the Mediator will decide the language(s) in which the Mediation will be conducted.

ARTICLE 8: CONFLICTS OF INTEREST

The Mediator will disclose to the Parties and MTI E.A Mediation Centre any matter of which the Mediator is or at any time becomes aware which could be regarded as being or creating a conflict of interest (whether apparent, potential or real) in relation to the dispute or any of the Parties involved in the Mediation. In these circumstances the Mediator:

- May continue to act provided the Parties and MTI E.A Mediation Centre provide consent to the same; or
- Cease to act at the request of either MTI E.A Mediation Centre or one or both of the Parties. In this situation MTI E.A Mediation Centre will appoint a new mediator and the original mediator will forfeit the entirety of the Mediator's Fee to which he or she may otherwise have been entitled (regardless of how much time has already been incurred by the Original Mediator in respect of the Mediation).

ARTICLE 9: TERMINATION OF THE MEDIATION

A Mediation commenced pursuant to these Rules shall terminate when either:

- a settlement is reached; or
- a Party advises the Mediator that it is their view that a settlement cannot be reached and that it is their wish to bring the Mediation to an end.

ARTICLE 10: SETTLEMENT AGREEMENT

If terms are agreed in settlement of the dispute, the Parties shall be responsible for drawing up and signing a settlement agreement, setting out such terms.

Neither MTI E.A Mediation Centre nor the Mediator shall be responsible for the drafting, reviewing, or enforcing the terms of any settlement agreement.

ARTICLE 11: FEES AND COSTS

The Requesting Party shall pay MTI E.A Mediation Centre a non-refundable Filing Fee (without which the Request shall not be registered) as set out in Schedule 1 to these Rules.

Following registration of the Request and the payment of the Filing Fee, MTI E.A Mediation Centre shall then request the Parties to pay the Mediation Fee in order for the Mediation to proceed. The Mediation Fee shall be paid by the Parties in equal shares or in such other proportions as they have agreed in writing. Schedule 1 sets out further details of the Mediation Fee payable.

A Mediator shall not be appointed and the Mediation shall not proceed unless and until the Mediation Fee has been paid in full. If the Mediation does not proceed after the Mediation Fee has been paid, the Mediation Fee will be refunded to the Parties.

All other costs incurred by the Parties, including legal fees, will not form part of the Filing Fee, the Mediation Fee or the Mediation Charges for the purposes of these Rules.

The Parties are solely responsible for any Additional Mediator Time in equal shares unless otherwise agreed between the Parties in writing. The Mediator shall invoice the Parties via MTI E.A Mediation Centre setting out the Additional Mediator Time incurred. The Parties are responsible for payment of the Additional Mediator Time within the timescales set out in the Mediator's invoice. MTI E.A Mediation Centre accepts no liability for payment of any Additional Mediator Time to the Mediator.

ARTICLE 12: PRIVACY

All Mediations shall be conducted in private, and shall be attended only by the Mediator, the Parties and any other individual(s) identified pursuant to Article 7 of these Rules.

No recording of any kind shall be made of any meetings of the Parties with the Mediator.

ARTICLE 13: CONFIDENTIALITY

Each of the Parties, and any person acting on behalf of a Party:

-shall, unless otherwise agreed in writing by the Parties, keep confidential all information arising out of or in connection with the Mediation, including the terms of any settlement, but excluding the fact that the Mediation has or will take place; and

-acknowledges that all information passing between the Parties, the Mediator, and MTI E.A Mediation Centre, however communicated, is confidential and may not be produced as evidence or disclosed to any judge, arbitrator or other decision maker in any legal or other formal process.

-Where a Party discloses to the Mediator or MTI E.A Mediation Centre any information at any stage of the Mediation, the Parties acknowledge and agree that neither the Mediator nor MTI E.A Mediation Centre will disclose that information to any other party or person without the consent of the Party disclosing it.

ARTICLE 14: COURT OR ARBITRAL PROCEEDINGS

Unless the Parties have agreed otherwise, and notwithstanding the Mediation, the Parties may initiate or continue any court or arbitral proceedings in respect of the dispute which is the subject of the Mediation.

ARTICLE 15: LIMITATION OF LIABILITY

The Parties agree that the Mediator and MTI E.A Mediation Centre shall not be liable to the Parties, either jointly or severally, for any act or omission in

relation to the Mediation unless the act or omission is proved to have been fraudulent or involved willful misconduct.

ARTICLE 16: BREACH OF THESE RULES

MTI E.A Mediation Centre reserves the right in its sole discretion to end a Mediation in respect of which any Party or Mediator is found to be in breach of these Rules or MTI E.A Mediation Centre Code of Conduct for Mediators



Effective 1 January 2021

Administrative Charges

1(a) Registration fee KSHS 5,000

The registration fee is The Mediation Centre's charge for processing the Request for Mediation. The registration fee is payable in advance with the Request for Mediation and is non-refundable.

1(b) Administration Fees

Time spent by the Secretariat of The Mediation Centre in the administration of the mediation. Registrar/Deputy Registrar **KSHS 1, 000 per hour**

Other Secretariat personnel **KSHS 500 per hour**

1 (c) Expense

Expenses incurred by The Mediation Centre in connection with the mediation (such as postage, telephone, facsimile, room hire, catering and other support services), will be charged at cost. For information purposes only, previous mediations have incurred a daily fee of approximately **KSHS 4, 000 per person** as conference rates.

Mediators' Fees and Expenses

2(a) Fees

Each Mediator has different rates, which may vary according to the circumstances of the case and the qualifications of the Mediator. Rates will be advised and agreed by the parties prior to the appointment of the Mediator.

2(b) Expenses

Expenses incurred by the Mediator in connection with the mediation will be charged to the parties at the cost to the Mediator.

2(c) Time reserved but not Used

The Mediator may, at his or her discretion, charge for time reserved but not used at the date of the conclusion of the mediation. The basis for this charge shall be as follows:

(i) if the mediation is concluded 15 days or more before the first day of the time reserved: no charge

(iii) if the mediation is concluded 5 days or less before the first day of the time reserved: 100% of time reserved

3.Registration Fee

3(a) The Registration Fee shall be paid by the party or parties requesting mediation.

3(b) A Request for Mediation shall not be registered, and the mediation shall not commence unless and until the Registration Fee has been paid.

The Deposit

4(a) As soon as practicable after commencement of the mediation, The Mediation Centre will request the parties to file a deposit to be held on account of the Mediator's Fees and Expenses and the Administration Fees and Expenses (the "Deposit"). The parties in equal shares or in such other proportions shall pay the Deposit as they have agreed in writing.

4(b) In the event that a party fails to pay its share of the Deposit, another party may make a substitute payment to allow the mediation to proceed.

4(c) A Mediator shall not be appointed and the mediation shall not proceed unless and until the Deposit has been paid in full.

The Costs

5(a) The costs of the mediation shall include the Mediator's Fees and Expenses, Time Reserved but Not Used (if any), and the Administrative Charges of The Mediation Centre, as set out in this Schedule (the "Costs").

5(b) In the event a mediator is not appointed; the mediation does not proceed, and the mediation was commenced. The Mediation Centre's Administration Fees and Expenses shall be invoiced for immediate payment by the parties in equal shares, or in such other proportions as the parties have agreed in writing.

5(c) In the event a mediator is not appointed, and the mediation does not proceed, by operation of the Rules, The Mediation Centre's Administration Fees and Expenses shall be invoiced for immediate payment by the party or parties which requested mediation.

5(d) In the event a mediator is appointed, and the mediation does proceed:

(i) At the conclusion of the mediation, the Mediation Centre shall determine the Costs;

- (ii) if the Deposit exceeds the Costs, the excess will be reimbursed to the parties in the proportions in which they have contributed to the Costs, or in such other proportions as the parties have agreed in writing; and
- (iii) If the Costs exceed the Deposit, the shortfall will be invoiced for immediate payment by the parties in such proportions as the parties may have agreed in writing, or, absent such agreement, in such proportions as The Mediation Centre may determine.

Joint and several liability

Where a mediation is commenced pursuant to the Rules herein, the parties shall be jointly and severally liable for the Mediator's Fees and Expenses, and the Administration Fees and Expenses, until all such sums have been paid in full

