

## MEDIATION AND ONLINE DISPUTE RESOLUTION SCHEME

### **Lagos Court of Arbitration**

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The LCA is a private sector owned and operated institution, independent of regulation, direction or control by any branch of government; it was established under the LCA Law No. 17 of 2009 which was made pursuant to the Lagos State Arbitration Law, No. 18 of 2009 as an independent dispute resolution institution.

As Africa's premier dispute resolution institution, the LCA is big enough to deliver world-class and cost effective dispute resolution services, yet small enough to know and cater for specific needs of its users. Its panel of neutrals is highly qualified prominent international practitioners with relevant qualifications and experience.

LCA's streamlined schemes and procedures allow it to resolve disputes by avoiding technicalities that lead to unnecessary delay in the dispute resolution process, thus saving parties significant time and cost for resolving their disputes.

LCA's ability to design special and industry-specific procedures that respond to the needs of users coupled with its strategic location in Lagos, the commercial capital of the largest economy in Africa make it the go-to dispute resolution institution in Africa.

### **Chartered Institute of Arbitrators (Nigeria Branch)**

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*The statutory mandate of the Lagos Court of Arbitration under "A Law to establish the Lagos Court of Arbitration and for Connected Purposes" ("the LCA Law") is, inter alia, "to promote resolutions of disputes in the territory of Lagos State by arbitration and other Alternative Dispute Resolution mechanisms apart from litigation." Since its inception in 2009, the Lagos Court of Arbitration (LCA) is the foremost arbitration institution in Nigeria.*

*The Chartered Institute of Arbitrators Nigeria is the Nigerian Branch of an International Organization committed to the promotion of Arbitration and Alternative Dispute Resolution (ADR) as the preferred means for resolving disputes. The Chartered Institute is a learned society that works in the public interest to promote and facilitate the use of Alternative Dispute Resolution (ADR) mechanisms. The Institute has over 15,000 members located in more than 120 countries and supports the global promotion, facilitation and development of all forms of private dispute resolution.*

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THE LAGOS COURT OF ARBITRATION AND CHARTERED INSTITUTE OF ARBITRATORS (NIGERIA BRANCH)'S MSME ARBITRATION,

The Chartered Institute of Arbitrators is a learned society founded in the United Kingdom in 1915, granted Royal Charter in 1979 and has gained international presence in at least 133 countries. The Nigeria Branch attained branch status in 1999. It has about 1,137 members.

Chartered Institute of Arbitrators (Nigeria Branch) promotes and facilitates dispute resolution mechanisms that present alternatives to litigation in court.

Chartered Institute of Arbitrators training is renowned as the gold standard for acquisition of knowledge and skills for Arbitration and other Alternative Dispute Resolution (ADR) practice in the world.

### **Micro, Small and Medium Enterprises (MSME) Arbitration, Mediation and Online Dispute Resolution Scheme**

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In the commercial environment of Nigeria where:

1. Businesses endure high costs in time and money whilst trying to resolve disputes through litigation
2. The Courts are inundated with cases, and
3. The Courts seek to de-congest their heavy caseload by encouraging resolution of commercial disputes through Alternative Dispute Resolution (ADR) mechanisms,

The MSME Dispute Resolution Scheme is developed by the Lagos Court of Arbitration and the Chartered Institute of Arbitrators (Nigeria Branch) to promote and facilitate access by Micro, Small and Medium Enterprises (MSME) to arbitration, mediation and online facilities for resolution of commercial disputes.

The scheme is intended to provide simple, cost effective and timely resolution of disputes by the final, legally binding and enforceable decisions of Sole Arbitrators and Mediators, in less than 90 days from their appointment or as soon as practicable.

Parties interested in use of this scheme shall apply to the joint board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch) for the service.

Parties are advised to insert recommended 'Alternate Dispute Resolution Clauses' in their commercial contracts, invoices or receipts issued as proof of their obligatory performance, provided the recipients of such invoices or receipts sign on them in acceptance of the Alternate Dispute Resolution agreement.

### **Benefits of the MSME Alternate Dispute Resolution Scheme**

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1. **Minimized Fees and Pre-determined Costs:-** The scheme offers convenience of pre-determined, low budget arbitration and mediation costs. Arbitrators' and Mediators' fees are fixed. In addition, all parties expenses recoverable are known from the onset.
2. **Speed:-** The Arbitration and Mediation are concluded and award issued within the shortest possible time.
3. **Minimized Formalities:-** Formal procedural steps are kept to a minimum.
4. **Simplicity:-** The scheme is very simple, legal representation may be unnecessary.
5. **Privacy and Confidentiality:-** The process is private and confidential.
6. **Enforceability:-** An award or settlement from the Scheme is final, binding and can be enforced by courts like any court judgment.

## How the MSME Scheme Works

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1. The scheme is aimed at extending arbitration and mediation services to micro, small and medium scale businesses.
2. An agreement is a pre-requisite for an arbitration or mediation to take place. It is strongly advised therefore, that the recommended **dispute resolution clause** is inserted in contract documents or at least on invoices or receipts issued in the course of business transactions, provided recipients of invoices or receipts sign on them in acceptance of the arbitration and or mediation agreement. In the absence of a dispute resolution clause as stated, a submission agreement or a jointly signed application for appointment of an Arbitrator or Mediator, will be taken as consent of both parties to submit to arbitration or Mediation.
3. The dispute resolution clause and submission agreement shall state that the Joint Board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch) shall appoint the sole arbitrator or mediator as the case may be, to determine the disputes referred. The application for appointment of an arbitrator or mediator by both parties in dispute shall be addressed to the joint Board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch).

## Recommended Alternate Dispute Resolution Clauses

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### MSME SCHEME ARBITRATION CLAUSE

Any dispute, controversy, or claim arising out of or in connection with this contract, or the breach, termination or validity thereof, shall be settled by final and binding arbitration, in accordance with MSME Arbitration, Mediation and Online Dispute Resolution Scheme Rules, by a single arbitrator appointed by the joint Board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch).

### MSME SCHEME MEDIATION CLAUSE

“Any dispute, controversy or claim arising out of or connected with this Agreement or the breach thereof which cannot be mutually resolved by amicable discussions between the parties (‘the dispute’) shall be referred to Mediation to be conducted in accordance with the MSME Arbitration, Mediation and Online Dispute Resolution Scheme Rules. The dispute shall be resolved by a sole mediator appointed by the joint Board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch).

The settlement agreement reached by the parties pursuant to the Mediation shall be final and binding as soon as it is signed by the parties or their representatives.

### MSME SCHEME MED/ARB CLAUSE

Any dispute arising out of or in connection with this contract shall, at first instance, be referred to a mediator for resolution under the MSME Arbitration, Mediation and Online Dispute Resolution Scheme Rules.

A mediator shall be appointed by the joint Board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch).

Should the mediation fail, in whole or in part, the joint Board of the President of the Lagos Court of Arbitration and the Chairman of the

CIArb (Nigeria Branch) shall appoint a single arbitrator for final resolution under the MSME Scheme. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing.

#### MSME Arbitration, Mediation and Online Dispute Resolution Scheme Rules

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1. The MSME Arbitration, Mediation and Online Dispute Resolution Scheme is applicable for resolution of commercial disputes with monetary value from ₦250, 000.00K (Two Hundred and Fifty Thousand Naira) to ₦10, 000,000.00K (Ten Million Naira).
2. This service can only be rendered to parties with an arbitration or mediation agreement. A dispute resolution clause must be inserted in the contract documents or at least on the invoices or receipts issued in the course of business transactions, provided recipients of such invoices or receipts sign on them in acceptance of the arbitration or mediation agreement. In the absence of a dispute resolution clause as stated, a submission agreement or a jointly signed application for appointment of an Arbitrator or Mediator, will be taken as consent of both parties to submit to arbitration or mediation.
3. A party relying on an arbitration or mediation agreement to initiate arbitration or mediation must start by notifying the other in writing. Following notification, the party will then apply to the joint Board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch) to appoint a Sole Arbitrator or Mediator

to determine or settle the disputes referred.

4. The request for appointment of the Arbitrator or Mediator must be accompanied by a nonrefundable administrative fee of ₦10, 000.00K (Ten Thousand Naira).
5. An applicant for use of the scheme will be required to fill an application/appointment form to provide information such as:
  - A reference to the contract.
  - The Reference to an arbitration agreement, either in the contract, or in a receipt issued in performance of the contract or an application jointly signed by the Claimant and the Respondent, for appointment of an Arbitrator or Mediator to resolve their dispute under the Scheme.
  - Name, home and office addresses, telephone numbers and electronic mail addresses of Claimant (applicant)
  - Name, home and office addresses, telephone numbers and electronic mail addresses of Respondent
  - General nature of dispute.
  - Monetary value involved.
  - Remedies sought by the Claimant
6. The appointment of a Sole Arbitrator or Mediator by the joint board of the President of the Lagos Court of Arbitration and the Chairman of the CIArb (Nigeria Branch) will be done within 7 days of receipt of application to do so.
7. The Arbitrator or Mediator will issue a timetable for the arbitration or set a date for the Mediation within 7 days of being appointed.
8. Subject to mandatory laws and rules of the place of arbitration or mediation, all procedural matters will be strictly at the discretion of the arbitrator or mediator to

ensure compliance with the publication of an award or terms of settlement within 90 days or as soon as practicable.

9. Documents only and Online Dispute Resolution may be adopted for proceedings to further minimize cost.
10. Statements of Case and Witness Statements shall be encouraged to avoid exceeding 5,000 (five thousand) words.
11. In Arbitration, all written documents and testimonies must be exchanged between parties, then a copy sent to the arbitrator. Neither party should communicate with the arbitrator in the absence of the other, nor write to the Arbitrator without keeping the other party in copy.
12. In Arbitration, award of costs to a successful party may include party expenses the Arbitrator deems fair to recover with the cost of arbitration.
13. In Arbitration, Arbitration cost, inclusive of arbitrator's fees and expenses will be paid to the Lagos Court of Arbitration. Failure to pay as agreed by the claimant or counterclaimant shall be taken as a withdrawal of the case. Nonpayment by the respondent to a claim or counterclaim will be taken as a debt of the Respondent.
14. In Mediation, Mediation cost, inclusive of mediator's fees and expenses will be paid by Parties in equal shares and paid to the Lagos Court of Arbitration.
15. Within 90 days or as soon as practicable, the Arbitrator will issue to the parties, a written, reasoned award. The award will be signed and dated by the Arbitrator, and will be final and legally binding. The Arbitrator will simultaneously send to the Lagos Court of Arbitration, a copy of his award, together with an invoice of his charges.

Upon receipt of that invoice, the Lagos Court of Arbitration will release to the Arbitrator, his or her fee.

16. Upon settlement of dispute in mediation, the Mediator and Parties shall sign the Terms of Settlement prepared by the Mediator. The Mediator shall send to the Lagos Court of Arbitration, a copy of signed terms of settlement with an invoice of his charges. Upon receipt of that invoice and terms of settlement, the Lagos Court of Arbitration will release to the Mediator, his or her fee.
17. If the parties settle their dispute after commencing an arbitration, they must inform the Lagos Court of Arbitration and the Arbitrator immediately. In the event of settlement after the Arbitrator has been appointed, the Lagos Court of Arbitration will release to the Arbitrator, his or her fee, upon receipt of the Arbitrator's invoice.
18. Neither the Lagos Court of Arbitration, nor any of its officers, agents, or employees will be liable for anything done or omitted to be done in the appointment or nomination of an Arbitrator or a Mediator under the MSME Arbitration, Mediation and Online Dispute Resolution Scheme, unless the act or omission was shown to be made in bad faith.
19. Neither the Lagos Court of Arbitration, nor its officers, agents, or employees shall be liable for anything done or omitted to be done by an Arbitrator or a Mediator nominated or appointed by the Lagos Court of Arbitration under the MSME Arbitration, Mediation and Online Dispute Resolution Scheme (or its employees or agents) in the discharge or purported discharge of his or her functions as an Arbitrator or Mediator.
20. Any aspect of the proceedings not covered by the MSME Scheme Rules as

set out above shall be regulated by the Lagos Court of Arbitration Expedited Arbitration Rules 2018, Lagos Court of Arbitration Expedited Mediation Guidelines 2018 or the Lagos Court of Arbitration Expedited Med/Arb Rules 2018 as the case may be.

21. The place of arbitration shall be Nigeria and the language of the Arbitration shall be English Language.

Naira and One Kobo) to N10,000,000.00 (Ten Million Naira), Arbitrator's Fee shall be fixed at ~~N~~400,000.00 (Four Hundred Thousand Naira) and all other recoverable arbitration and party expenses will be capped at a maximum of ~~N~~200,000.00 (Two Hundred Thousand Naira).

#### MSME Arbitration, Mediation and Online Dispute Resolution Scheme Costs

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1. For commercial disputes with monetary value from ~~N~~250,000.00 (Two Hundred and Fifty Thousand Naira) to ~~N~~1,000,000.00 (One Million Naira), Arbitrator's Fee is fixed at ~~N~~50,000.00 (Fifty Thousand Naira) and all other recoverable arbitration and party expenses will be capped at a maximum of ~~N~~25,000.00 (Twenty Five Thousand Naira).
2. For commercial disputes with monetary value from ~~N~~1,000,000.01 (One Million Naira and One Kobo) to N2,000,000.00 (Two Million Naira), Arbitrator's Fee shall be fixed at ~~N~~100,000.00 (One Hundred Thousand Naira) and all other recoverable arbitration and party expenses will be capped at a maximum of ~~N~~50,000.00 (Fifty Thousand Naira).
3. For commercial disputes with monetary value from ~~N~~2,000,000.01 (Two Million Naira and One Kobo) to N5,000,000.00 (Five Million Naira), Arbitrator's Fee shall be fixed at ~~N~~250,000.00 (Two Hundred and Fifty Thousand Naira) and all other recoverable arbitration and party expenses will be capped at a maximum of ~~N~~100,000.00 (One Hundred Thousand Naira).
4. For commercial disputes with monetary value from ~~N~~5,000,000.01 (Five Million