



**NIGERIAN ELECTRICITY REGULATORY  
COMMISSION**

**HANDBOOK**

**ON**

**DISPUTE RESOLUTION**

**JANUARY 2011**

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## **PART ONE**

### **1. Introduction**

- 1.1 The Nigerian Electricity Regulatory Commission [hereinafter referred to as “the Commission”] is a body corporate with perpetual seal established under Part III, Section 31 of the Electric Power Sector Reform Act 2005 [hereinafter referred to as “EPSR Act”].
- 1.2 The Commission is the regulatory body for the Nigerian electricity sector generally vested with responsibility to regulate and monitor the operations of the sector and ensure the safety, security, reliability and quality of service in the production and delivery of electricity to consumers.
- 1.3 By virtue of section 32 of the EPSR Act, the Commission is empowered to undertake such activities which are necessary to or convenient for the better carrying out of or giving effect to the objects of the Commission.
- 1.4 The Commission is mindful:
  - i. that different types of disputes may occur in the electricity sector.
  - ii. of the need to ensure that disputes within the sector are resolved efficiently, expeditiously and cost effectively in the most appropriate manner.
  - iii. that unresolved/protracted disputes impact negatively on the optimal utilization of resources and the growth efficacy and operations of the electricity sector.
  - iv. that alternative methods of dispute resolution compliment the judicial system in the quest for effective means of dispute resolution.
- 1.5 The Commission has established panels and procedures for the effective resolution of disputes within the sector as contained within the Market Rules, Grid Code, Metering Code, regulations and other relevant documents of the Commission.
- 1.6 This document is a general guide dealing with the resolution of disputes in the Nigerian electricity sector. It should be used as an introductory guide and does not deal with all legal details associated with dispute resolution. Legal guidance may therefore be sought when deemed necessary.

### **2. Overriding Objectives**

The provisions contained in this Handbook aims to:

- 2.1 Provide a central access point for information on the dispute resolution processes available in the Nigerian electricity sector.

- 2.2 Enhance access to justice within the electricity sector by providing alternative means of resolving disputes using fair, efficient and expeditious means, thereby building investor confidence in the dispute resolution regime of the Commission.
- 2.3 Reduce the cost of resolving disputes in the electricity sector by encouraging the utilization of cost effective ADR mechanisms aimed at avoiding protracted and avoidable litigation thus enhancing a more efficient business regime within the sector.
- 2.4 Assist industry players and stakeholders build better relationships and focus on the key business of providing efficient and low cost electricity for the people of Nigeria.
- 2.5 Preserve the elements of discretion and flexibility necessary for justice, not only to be done, but also to be seen to be done by ensuring that the rules, procedures and directions contained in this Handbook are not too prescriptive.

## **PART TWO:**

## **INTERPRETATION AND DEFINITIONS**

### **2. Interpretation**

- 2.1 The rules and directives contained in this Handbook shall be construed and interpreted in a liberal manner in order to ensure fair, efficient, expeditious and cost effective means of dispute resolution in the Nigerian electricity sector.
- 2.2 The table of contents, the headings and sub-headings used in this Handbook are included for convenience and shall not be taken into consideration in the interpretation or construction of any part of this Handbook.
- 2.3 Words importing any one gender include the other gender and the singular includes the plural and vice-versa.
- 2.4 Words or expressions used in this Handbook shall have the same meanings respectively assigned to them in the EPSR Act and other relevant rules, codes and regulations of the Commission unless the context otherwise admits.

### **3. Definitions**

- 3.1 The following words as defined in the EPSR Act are restated for ease of reference:
  - 3.1.1 “Act” means the Electric Power Sector Reform (EPSR) ACT 2005 or any subsequent amendments or revisions.
  - 3.1.2 “Consumer” means any end-user of electricity who is a customer of a distribution licensee that is not an eligible customer and for purposes of filing a complaint with the Commission and for any other reason that the Commission may determine, a person who is temporarily disconnected or otherwise without service provided that a person who applied for but has yet to receive, service shall also be deemed to be a consumer.
  - 3.1.3 “Grid Code” means instructions, rules, procedures, guidelines e.t.c for the operation and planning for an interconnected power system and accounting requirements relating thereto as may be amended from time to time.
  - 3.1.4 “Licence” means a licence issued by the Commission under Part IV of the EPSR Act.
  - 3.1.5 “Licensee” means the holder of a license issued by the Commission under Part IV of the EPSR Act.
  - 3.1.6 “Market Rules” means the rules as may be amended from time to time developed for the operation of the national grid by the system operator and the establishment and governance of market related to electricity and ancillary services which rules complement and supplement the Grid Code and should be read in conjunction therewith.

3.2 In this Handbook:

- 3.2.1 “Applicant/Claimant” means any person or party instituting dispute resolution proceedings.
- 3.2.2 “DRAM” means Dispute Resolution Assessment Meeting, a meeting convened by the Dispute Resolution Counsellor upon receipt of a notice of a dispute served on him by a party to the dispute with the purpose of using the forum to assist the parties to determine the appropriate mode for resolution of the dispute, encouraging parties to consider the use of Alternative Dispute Resolution and or clarifying any other matter relating to the resolution of the dispute.
- 3.2.3 “Neutral” means any person screened, listed or appointed through the Commission’s process to provide alternative dispute resolution services in the Nigerian electricity sector including the Dispute Resolution Counsellor, members of the Dispute Resolution Panel, Members of the Metering Committee, Electricity Referee and members of the Panel of Neutrals.
- 3.2.4 “Office of the Dispute Resolution Counsellor” means the office of the Commission vested with responsibility for dispute resolution functions in the electricity sector which functions includes trying to settle a dispute and advising parties on the various options available.
- 3.2.5 “Respondent” means any person or party against whom dispute resolution proceedings have been instituted.

## **PART THREE**

## **THE LICENCE CONDITION**

### **3.0 EPSR Act**

- 3.1 Section 71[a] of the EPSR act provides that a licence may be issued subject to such terms and conditions as may be prescribed or as the Commission may reasonably determine.
- 3.2 Section 71[2] provides that the terms and conditions of a licence may require the licensee to refer disputes for arbitration, mediation or determination by the Commission.

### **4.0 Terms and Conditions of Licence**

- 4.1 It is a licence condition that alternative dispute resolution is an obligatory mode of resolving disputes in the electricity sector. Licensees are obliged to attempt to resolve disputes through direct negotiation failing which the dispute may be resolved through other alternative dispute resolution procedures or arbitration as may be applicable in the relevant Commission's rules and regulations.
- 4.2 Licensees are advised to peruse carefully their license condition and ensure compliance with Section 4.1 above.



## **PART FOUR            ELECTRICITY SECTOR DISPUTE RESOLUTION**

4.0     The Commission encourages and actively promotes the use of other dispute resolution mechanisms apart from the judicial method provided in section 6 of the 1999 constitution of the Federal Republic of Nigeria. These mechanisms are generally referred to as Alternative Dispute Resolution [ADR]. ADR mechanisms include but are not limited to the following:

- a.     Negotiation
- b.     Mediation
- c.     Arbitration
- d.     Expert determination
- e.     Early Neutral Evaluation
- f.     Ombuds
- g.     Referee

4.1     These mechanisms are briefly described as follows:

4.1.1   Negotiation: - is a voluntary and usually informal process through which parties explore and identify options for the resolution of their differences and disputes aimed at agreeing a mutually acceptable solution.

4.1.2   Mediation: - is a process where a neutral third person referred to as a mediator assist the parties to resolve their dispute. The mediator does not make a decision for the parties but assist the parties to arrive at a mutually acceptable solution.

4.1.3   Arbitration: - is a private process whereby the arbitrator, a neutral third person makes a decision about the dispute after receiving evidence and hearing arguments. The arbitration process is similar to a court process in that the arbitrator's decision is final and binding.

4.1.4   Expert determination: - is a process whereby an expert, a neutral third person is appointed to investigate issues of fact, technicalities or any other relevant parameter with a view to determining the dispute based on his expertise on the subject matter.

- 4.1.5 Early Neutral Evaluation: - is a process in which a third party neutral at an early stage provides an unbiased evaluation of the dispute upon reviewing the strengths and weaknesses of each party.
- 4.1.6 Ombuds: - is a process whereby industry regulates itself through an ombudsman, a third party set up to investigate complaints within the industry and proffer solutions.
- 4.1.7 Referee: - is a process in which an impartial investigator called a referee conducts an investigation and make recommendations, report or finding which may form the basis of a decision.

## **4.2 Multi-tier Dispute Resolution Process**

- 4.2.1 The Commission encourages the use of multi-tier Dispute Resolution processes and parties shall not be restricted to the application of any single dispute resolution process for the resolution of the dispute but shall be encouraged to utilize a combination of ADR mechanisms, whether contained in this Handbook or not.

## **4.3 Dispute Resolution Bodies**

- 4.3.1 In the Nigerian electricity sector the following office/bodies/panels/ have been vested with dispute resolution functions:
- i. The Commission
  - ii. Dispute Resolution Counsellor
  - iii. Dispute Resolution Panel
  - iv. Metering Committee
  - v. Panel of Neutrals
- 4.3.2 The Commission supports the use of other processes including the ombudsman aimed at expeditious, effective dispute resolution subject to compliance with the EPSR Act and other rules, codes and regulations of the Commission. Participants are encouraged to set up ombudsman schemes.

#### **4.4 The Commission**

4.4.1 The Commission is vested with dispute resolution functions under various provisions of the EPSR Act and relevant codes, rules and regulations.

#### **4.5. Scope**

4.5.1 Licensees, consumers and third parties may refer disputes arising between them in respect of, under or pertaining to the provisions of the EPSR Act to the Commission for resolution.

4.5.2 Nothing contained in section 4.4.1 herein shall vest the liberty on parties to refer any dispute which by the provisions of EPSR Act, the Grid Code, Market Rules, Metering Code or other Commission's rules or regulations is to be referred to another body.

#### **4.6 Mechanism**

4.6.1 In exercising its dispute resolution function, the Commission shall utilize any appropriate mechanism including arbitration, mediation, expert determination and may act as referee.

#### **4.7 Applicable Rules**

4.7.1 The dispute shall be resolved by the respective applicable procedural rules as may be applicable including the arbitration rules in **Appendix 3** contained herewith.

## **5.0 Office of the Dispute Resolution Counsellor**

- 5.1.1 The Commission shall appoint a Dispute Resolution Counsellor on terms that the Commission considers appropriate and whose office shall be referred to as ‘The Office of the Dispute Resolution Counsellor’.
- 5.1.2 The office of the Dispute Resolution Counsellor is the first point of contact for any person who believes there is a dispute, question or difference to be resolved or requires clarifications in respect of any matter pertaining to the dispute resolution process in the Nigerian Electricity sector.
- 5.1.3 The Dispute Resolution Counsellor is generally responsible for the effective operation of the dispute resolution process of the Commission.

## **6.0 Appointment and Tenure of Dispute Resolution Counsellor**

- 6.1.1 The Counsellor shall be appointed for a fixed term of five (5) years and shall be eligible for re-appointment for one additional fixed term of five (5) years.

### **6.1 Qualification**

No person shall be appointed by the Commission as the Counsellor unless that person:

- i. Is a legal practitioner and has at least ten (10) years post-call experience in legal practice;
- ii. has a detailed understanding and experience of arbitration and ADR dispute resolution practice and procedures;
- iii. has an understanding of the Nigerian electricity industry or the capacity to quickly acquire such an understanding;
- iv. has provided to the Commission a signed declaration in the form set forth in **Form 4** hereto;
- v. has agreed to abide by the Code of Professional Ethics and Conduct contained in **Appendix 1** hereto.

### **6.2 Disqualification of Dispute Resolution Counsellor**

The following persons are disqualified from being a Dispute Resolution Counsellor:

- i. a person who is less than thirty-five (35) years or more than seventy(70) years of age;

- ii. person who is of unsound mind and has been so found by a court of competent jurisdiction in Nigeria or elsewhere;
- iii. a person who is not a natural person;
- iv. an undischarged bankrupt;
- v. an employee of any Local, State or Federal Government of Nigeria;
- vi. an employee of a participant or holder of a licence granted pursuant to the Act; or
- vii. is or has at any time, been a member of the Commission.
- viii. a person who is a director, officer, employee or agent of a market entity or any of its affiliates.
- ix. a person who has a spouse or relative who is a director, officer, employee or agent in a market entity or any of its affiliates.
- xi. a person who has a direct or indirect legal or beneficial interest in a commercial affiliation with a market entity or any of its affiliates.
- xii. a person who has a spouse or relative who has a direct or indirect legal or beneficial interest in or a commercial affiliation with a market entity or any of its affiliates.

### **6.3 Duties of the Dispute Resolution Counsellor**

- 6.3.1 Administer and ensure the effective and efficient operation of the dispute resolution processes herein contained in particular and of the Commission in general;
- 6.3.2 Ensuring compliance with the format for notices and the response thereto;
- 6.3.3 Serve as secretary of the Screening and Selection Committee for the Dispute Resolution Panel and the Panel of Neutrals;
- 6.3.4 Facilitate resolution of disputes in the Nigerian electricity sector.
- 6.3.5 Appoint members of the Dispute Resolution Panel/Panel of Neutrals to resolve disputes in accordance with the relevant procedural rules;
- 6.3.6 Administer case screening for appropriate ADR selections and chair the Dispute Resolution Assessment Meeting;
- 6.3.7 Ensure Commission-wide training to enhance skills and knowledge in ADR mechanisms and encourage their use for the resolution of internal disputes;

- 6.3.8 Provide consistent and co-ordinated advice to the Commission and other stakeholders on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision;
- 6.3.9 Ensure data collection, monitoring and performance evaluation in order to improve the dispute resolution services offered, develop best practice techniques as well as develop common performance and activity indicators in the sphere of ADR;
- 6.3.10 Increase awareness of and promote the use of arbitration and ADR processes in the electricity sector;
- 6.3.11 Produce an annual report of the activities of the Office of the Dispute Resolution Counsellor;
- 6.3.12 Such other duties and responsibilities as the Commission deems fit.

## **7.0 Ceasing to hold Office of Dispute Resolution Counsellor**

The Counsellor shall cease to hold office when he or she:

- i. Dies or resigns;
- ii. Is removed from office in accordance with Part 4, Article 8 hereto;
- iii. No longer meets the qualification requirements set forth in Part 4, Article 6.1 hereto;
- iv. Becomes disqualified in accordance with Part 4, Article 6.2 hereto;
- v. Attains the age of 70 (seventy) years.

## **8. Removal of Dispute Resolution Counsellor**

The Commission may remove the Dispute Resolution Counsellor from office if:

- i. he fails to act in accordance with his obligations and duties as contained in Part 4, Article 6.3 above, or
- ii. is convicted of a serious criminal offence, or
- iii. fails to abide by the Code of Professional and Ethical Conduct as contained in **Appendix 1** hereto, or
- iv. has committed a conduct involving serious moral turpitude.

**9. Appointment of Neutrals**

9.1 The Dispute Resolution Counsellor in making appointments of Neutrals shall be satisfied that the Neutral has no conflict of interest and all appointments shall be on a fair and objective basis.

**10. Immunity**

The Dispute Resolution Counsellor shall not be held liable for any act or omission done or made while engaged in the performance of his duties unless that act or omission complained of was done in bad faith, with malicious intent or in a manner exhibiting a wilful, wanton disregard of the rights, safety or property of any of the parties.

## **7.0 Dispute Resolution Panel**

7.1 The Dispute Resolution Panel is established pursuant to the provisions of Rule 42.1.3 of the Market Rules.

## **7.2 Scope**

7.2.1 The Dispute Resolution Panel is vested with responsibility for resolving disputes between:

- a. The System Operator or the Market Operator or a transmission licensee and any participant;
- b. The Market Operator and any person who has been denied certification by the Market Operator as a participant; and
- c. Participants; to the extent that such disputes are in accordance with the provisions of these Rules or the Grid Code, governed by Rule 43.
- d. Disputes between licensees arising from the operation of Market Rules.
- e. Any dispute relating to, arising out of or in connection with the Grid Code between:
  - i. a user and the TSP
  - ii. a user and a system operator
  - iii. a person who applies to be a user and the TSP; and
  - iv. between users
- f. Disputes between the Market Operator, System Operator and Transmission Service Provider (TSP).

## **7.3 Any other disputes**

7.3.1 Parties may also agree to vest the Dispute Resolution Panel with jurisdiction to resolve their disputes save where by the provisions of the relevant Commission's rules and regulations such disputes is outside the jurisdiction of the Dispute Resolution Panel.

## **7.4 Qualifications**

7.4.1 No person shall be appointed by the Commission as a member of the Dispute Resolution Panel unless that person:



- a). has a detailed understanding and experience of dispute resolution practice and procedures that do not involve civil litigation before the courts, such as mediation and arbitration;
- b). has an understanding of the Nigerian electricity industry or the capacity to quickly acquire such an understanding;
- c). is not, and does not have a spouse or relative that is, a director, officer, employee or agent of:
  - i. the TSP or an affiliate of the TSP;
  - ii. a Participant or an affiliate of a Participant; or
  - iii. a Licensee or an affiliate of a licensee;
- d). or his spouse or relative has no direct or indirect legal or beneficial interest in or commercial affiliation of the nature specified in Rule 42.3.2[b] of the Market Rules with:
  - i. the TSP or an Affiliate of the TSP;
  - ii. a Participant or an Affiliate of a Participant; or
  - iii. a Licensee or an Affiliate of a Licensee; and
- e). has provided to the Commission a signed declaration in the form set forth in **Form 4** hereto and agreed to abide by the Code of Professional Ethics and Conduct contained in **Appendix 1** hereto.

## **7.5 Disqualification**

7.5.1 The following persons are disqualified from being members of the Dispute Resolution Panel:

- a). a person who is less than twenty-five [25] years or more than 70 years of age;
- b). a person who is of unsound mind and has been so found by a court of competent jurisdiction in Nigeria or elsewhere;
- c). a person who is not a natural person;
- d). an undischarged bankrupt;
- e). a person who is an employee of the Government of Nigeria;
- f). a person who is an employee of any Participant or Licensee; or

- g) a person who is or has at any time been a member of the Commission.

## **7.6 Composition of Dispute Resolution Panel**

- 7.6.1 The Dispute Resolution Panel will consist initially of at least three (3) qualified members, and upon its full composition at the initiation of the Medium Term Market, shall consist of at least ten (10) qualified persons, each of whom shall be appointed by the Commission in accordance with Rule 42.3.9 of the Market Rules.
- 7.6.2 The members of the Dispute Resolution Panel appointed pursuant to paragraph 7.5.1 above shall, subject to paragraphs 7.5.2 and 7.5.3 and Rules 42.3.12 and 42.3.13 of the Market Rules serve for a term of five years.
- 7.6.3 A member of the Dispute Resolution Panel whose term has expired may be re-appointed by the Commission for a further term of five years, provided that:
  - i). no person may serve on the Dispute Resolution Panel for more than two terms;
  - ii). where the term of a member of the Dispute Resolution Panel expires while the member is acting as an Arbitrator in respect of a Dispute then, notwithstanding paragraph (i) of this proviso, the member shall automatically be re-appointed for such time as may be necessary to permit the member to complete the arbitration or other dispute resolution process; and
  - iii). the term of any member re-appointed pursuant to paragraph 7.5.2 of this proviso shall not be counted for purposes of determining the member's eligibility for reappointment under paragraph 7.5.1 of this proviso.

## **7.7 Removal of Members of Dispute Resolution Panel**

- 7.7.1 The Commission may remove any member of the Dispute Resolution Panel from office if such member:
  - (a) is convicted of a serious criminal offence;
  - (b) has engaged in conduct involving serious moral turpitude; or
  - (c) is guilty of conduct which prejudicially affects, or is perceived as likely to affect, his impartial status as a member of a Dispute Resolution Panel.
- 7.7.2 A member of the Dispute Resolution Panel ceases to hold office when he or she:
  - (a) dies or resigns;
  - (b) is removed by the Commission pursuant to Rule 42.3.12;

- (c) no longer meets the qualification requirements set forth in Rule 43.2.12 or the criteria established pursuant to Rule (iii)(b); or
- (d) becomes disqualified in accordance with Rule 42.3.11.

## **7.8 Immunity**

- 7.8.1 Members of the Dispute Resolution Panel shall not be held liable for any act or omission done or made while engaged in the performance of their duties unless that act or omission complained of was done in bad faith, with malicious intent or in a manner exhibiting a wilful, wanton disregard of the rights, safety or property of any of the parties.

## **7.9 Remuneration of Members of the Dispute Resolution Panel**

- 7.9.1 Pursuant to Rule 42.3.17 of the Market Rules the members of Dispute Resolution Panel shall be entitled to remuneration in accordance with the rates specified by the Commission from time to time. The current rates are as stipulated in **Appendix 7**.
- 7.9.2 Pursuant to the provisions of Rule 42.3.7 of the Market Rules, the Dispute Resolution Panel may utilize any other dispute resolution mechanisms deemed necessary for the just resolution of any dispute brought before it.

## **7.10 Decision Making/Applicable Rules**

- 7.10.1 The Dispute Resolution Panel shall resolve the dispute in accordance with the arbitration rules set out in Rule 43 of the Market Rules as modified and contained herein as **Appendix 2**.
- 7.10.2 Pursuant to provisions of Rule 42.3.7 of the Market Rules, the Dispute Resolution Panel may utilize any other dispute resolution mechanisms deemed necessary for the just resolution of any dispute brought before it.

## **8.0 Metering Committee**

8.1 The Metering Committee is established pursuant to the provisions of section 3.1.2 of the Metering Code.

## **8.2 Scope**

8.2.1 The Metering Committee is vested with responsibility to resolve disputes arising from the implementation of the code including that pertaining to:

- a. Siting of the Commercial Metering System;
- b. Technical specifications for Meters, Metering Equipment, or the Data Collection System;
- c. Sealing of Metering System;
- d. Compliance of Metering System with technical specifications of the Metering Code;
- e. Compensation values;
- f. Any such other matters as relevant parties may agree.

## **8.3 Any other disputes**

8.3.1 Parties may also agree to vest the Metering Committee with jurisdiction to resolve their disputes save where by the provisions of the relevant Commission's rules and regulations such disputes is outside the jurisdiction of the Metering Committee.

## **8.4 Composition and Method of Appointment**

8.4.1 Pursuant to the provisions of section 3.2 of the Metering Code the Committee shall be composed of ten members constituted as follows:

- a. One member representing PHCN successor Generation Companies
- b. One member representing IPPs
- c. Two members representing successor PHCN Distribution Companies
- d. One member representing Meter manufacturers
- e. One member from the Meter Instrument Laboratories
- f. One member from the Market Operator

- g. One member from TCN
  - h. One member from the Nigerian Electricity Regulatory Commission
- 8.4.2 Nominated representatives of the Metering Committee shall be competent staff of managerial status of the organization they are representing.
- 8.4.3 All members of the Metering Committee are required to enter into confidentiality undertakings in favour of all parties and provide to the Commission a signed declaration in the form set forth in **Form 4** hereto and agree to abide by the Code of Professional Ethics and Conduct contained in **Appendix 1** hereto.

### **8.5 Remuneration of Members of the Metering Committee**

- 8.5.1 Members of the Metering Committee shall be entitled to remuneration when exercising their dispute resolution functions as experts in accordance with the rates specified by the Commission from time to time. The current rates are as stipulated in **Appendix 7**.

### **8.6 Immunity**

- 8.6.1 Members of the Metering Committee shall not be held liable for any act or omission done or made while engaged in the performance of their duties unless that act or omission complained of was done in bad faith, with malicious intent or in a manner exhibiting a wilful, wanton disregard of the rights, safety or property of any of the parties.

### **8.7 Decision Making/Applicable Rules**

- 8.7.1 Pursuant to the provisions of section 3.1.2 of the Metering Code the Metering Committee shall act as experts in resolving the dispute in accordance with the Expert Determination Rules attached herewith as **Appendix 6** and its decisions shall be binding on all parties including the Commission.

## **9.0 Panel of Neutrals**

9.1 The Commission has established and maintains a Panel of Neutrals composed of neutral persons including arbitrators, mediators, experts and evaluators to provide arbitration and alternative dispute resolution services in the electricity sector.

9.1.1 All members of the Panel of Neutrals are required to enter into confidentiality undertakings in favour of all parties and provide to the Commission a signed declaration in the form set forth in **Form 4** hereto and agree to abide by the Code of Professional Ethics and Conduct contained in **Appendix 1** hereto.

## **9.2 Scope**

9.2.1 Parties have the liberty to select one or more of their dispute resolver from the Panel of Neutrals to resolve their dispute subject to compliance with the Commission's rules and procedures and in instances where jurisdiction to resolve the dispute is not vested in another body or panel.

## **9.3 Qualification of Members of Panel of Neutrals**

9.1.1 No person shall be appointed as a member of the Panel of Neutrals unless that person:

- i. has a detailed understanding and experience of dispute resolution practice and procedures that do not involve civil litigation before the courts and has been trained and duly certified by a reputable and recognized organization in such field of expertise;
- ii. has an understanding of the Nigerian electricity industry or the capacity to quickly acquire such an understanding;
- iii. is not, and does not have a spouse that is a director, officer, other employee or agent of the Commission;
- iv. has no, and does not have a spouse that has a direct or indirect legal or beneficial interest in, or commercial affiliation with the Commission;
- v. has provided to the Commission a signed declaration in the form set forth in **Form 4** hereto;
- vi. has agreed to abide by the Code of Professional and Ethical Conduct contained in **Appendix 1** hereto.

9.1.2 The Commission shall have the authority to re-view the qualifications of the members of the Panel of Neutrals from time to time.

#### **9.4 Disqualification of Members of Panel of Neutrals**

The following persons are disqualified from being members of the Panel of Neutrals:

- i. A person who is less than twenty-five [25] years or more than seventy [70] years of age;
- ii. A person who is of unsound mind and has been so found by a court in Nigeria or elsewhere;
- iii. A person who is not natural person;
- iv. An undischarged bankrupt;
- v. An employee of the Local, State or Federal Government of Nigeria;
- vi. An employee of any participant or holder of a license granted by the Commission, or
- vii. Is or has at any time been a member of the Commission.

#### **9.5 Removal of Members of Panel of Neutrals**

The Commission may remove any member of the Panel of Neutrals if the member:

- i. is convicted of a serious criminal offence, or
- ii. has committed a conduct involving serious moral turpitude, or
- iii. is guilty of a conduct that prejudicially affects, or is perceived as likely to affect, his impartiality or independence as a member of a Panel of Neutrals or
- iv. derogates from the Code of Professional and Ethical Conduct contained in **Appendix 1**.

#### **9.6 Immunity**

Members of Panel of Neutrals shall not be held liable for any act or omission done or made while engaged in the performance of their duties unless that act or omission complained of was done in bad faith, with malicious intent or in a manner exhibiting a wilful, wanton disregard of the rights, safety or property of any of the parties.

## **PART 6:**

## **GUIDELINES TO DISPUTE RESOLUTION**

### **6.1 Objectives**

These Guidelines are designed with a view to assisting parties to identifying the dispute resolution mechanisms to resolve their disputes in accordance with the EPSR Act and other rules and regulations of the Commission.

### **6.2 Interpretation and General Procedural Provisions**

6.2.1 These Guidelines shall be liberally construed to secure the most expeditious, just and least expensive determination on its merits of every proceeding conducted there-under.

6.2.2 Where these Guidelines are silent in respect of any question or clarification required, the Dispute Resolution Counsellor may do whatever is reasonably necessary to enable the effective adjudication or settlement of the dispute subject to compliance with the provisions of the relevant rules and regulations of the Commission.

### **7. Scope of Application**

7.1 These Guidelines shall apply to the following disputes:

7.1.2 whereby the provisions of the Act, any dispute is to be resolved by arbitration, mediation, expert determination or any other alternative dispute resolution process;

7.1.3 to disputes referred to the Office of the Dispute Resolution Counsellor by the parties even where there is an existing dispute resolution agreement between the parties and the parties have agreed to submit to the dispute resolution process administered by the Dispute Resolution Counselor. In which case the parties will enter into a written agreement to submit the dispute to the dispute resolution process agreed upon;

7.1.4 whereby the provisions of any law, license, agreement or contract between the parties or where any rule, order, decision of the Commission has provided for arbitration or any ADR process as the preferred means of dispute resolution.

7.1.5 to disputes which by the provisions of the Market Rules shall be resolved by arbitration or any of the other dispute resolution processes.

7.1.6 to disputes which under Section 3.3.1 of Part 1 of the Grid Code should be resolved in accordance with the provisions contained in Rule 43 of the Market Rules.

7.1.7 to disputes which by virtue of Section 4.2.4 of Part 1 of the Grid Code shall be handled according to the rules and regulations of the Dispute Resolution Panel.



- 7.1.8 to disputes which have arisen under Section 1.9.2(f) of Part 4 of the Grid Code and to be resolved in accordance with Rule 43 of the Market Rules.
- 7.1.8 to disputes relating to operational testing which shall be handled in accordance with the relevant industry rules and regulations as approved by the Commission pursuant to the provisions of Section 11.10 of Part 4 of the Grid Code and to be resolved in accordance with Rule 43 of the Market Rules.
- 7.1.9 to disputes which, under the provisions of the Metering Code must be referred to the Metering Committee .
- 7.1.10 to any other dispute that may be referred to the Commission for adjudication or settlement including where one or more of the parties requires the assistance of the Commission in reaching agreement with the other party or parties to submit to arbitration or commence any other alternative dispute resolution process.

## **8. Non application**

**8.1** These Guidelines shall not apply to the following:

- 8.1.2 Proceedings and hearings held by the Commission pursuant to its regulatory functions and the provisions of its Business Rules;
- 8.1.3 to any complaint filed by a person seeking the action or order of the Commission against any other person or persons who is alleged to have contravened any law, rule, order or direction issued by the Commission or any other alleged wrong doing over which the Commission has regulatory jurisdiction.
- 8.1.4 Any dispute to which the Customer Complaints Handling Procedure applies to which the Customer Complaints Handling Procedures established by the Commission from time to time shall be applicable.
- 8.1.5 Any dispute which is to be resolved by any other means as provided in the Market Rules or any other relevant codes, rules or regulations of the Commission.

## **9.0 Notice of Dispute and Response**

- 9.1 Where any dispute is to be resolved under the rules of any of the dispute resolution processes applicable herewith the Applicant/Claimant shall file a Notice of Dispute **Form 1** with the Office of the Dispute Resolution Counsellor and serve a copy on the Respondent.
- 9.2 The Notice of Dispute shall specify, in reasonable detail and to the best of the Applicant/Claimant's knowledge:

- i. The names and contact details of parties to the dispute and of their authorized representatives as well as the names and contact details of any other person having knowledge of or who may be directly affected by the dispute, if any;
  - ii. A description of the nature of the dispute and assessment of its value where appropriate;
  - iii. The relevant Rule, Code, Agreement the dispute relates i.e provisions of the Grid Code, Metering Code, Market Rules, or any other Rules or Code developed by the Commission and the applicable body vested with responsibility to determine the dispute.
  - iv. Where the dispute is of a technical nature and requires special expertise, a description of the field of activity of any expert Neutral required with any desired qualifications of the expert, including any description of matters which would disqualify a potential expert Neutral;
  - v. Where the license or agreement between the parties contain a dispute resolution clause, a copy of the license or agreement;
  - vi. A concise summary of the facts underlying the dispute;
  - vii. The reliefs sought; and
  - viii. Any document upon which the Applicant/Claimant intends to rely in support of its complaint.
- 9.3 Where the Applicant/Claimant is a limited liability company, the Notice of Dispute shall be signed by a person with authority to bind the Applicant/Claimant.
- 9.4 Where arbitration is the mandatory dispute resolution mechanism prescribed for the dispute, the notice shall be referred to as 'Notice of Arbitration' and comply with any applicable provisions of arbitration under the Market Rules as contained in **Appendix 2** and the Arbitration Rules of the Commission as contained in **Appendix 3**.
- 9.5 The Respondent shall, within fourteen [14] Business Days of service of a Notice of Dispute, file with the Office of the Dispute Resolution Counsellor a written Response (the "Response") and serve same on the Applicant/Claimant and on any Respondent to a cross-claim identified in the Response, together with proof of service of the Response on the Applicant/Claimant and on any such Respondent.
- 9.6 The Response shall be in the format of **Form 2** hereof as amended from time to time and shall specify, in reasonable detail and to the Respondent's knowledge:

- i. the information referred to in 9.2 above, to the extent that the Respondent disagrees with the information relating thereto set forth in the Notice of Dispute;
- ii. the relief sought, a summary of the grounds for such relief and, where the relief sought includes a counterclaim or cross-claim against the Applicant or against any other Respondent, the information referred to in 9.2 above pertains specially to such counterclaim or cross-claim; and
- iii. any document upon which the Respondent intends to rely in support of its Response, including any counterclaim or cross-claim, and which was not identified by the Applicant/Claimant.

9.7 Where the Respondent is a limited liability company, the Response shall be signed by a person with authority to bind the Respondent.

## **10. Dispute Resolution Assessment Meeting (DRAM)**

10.1 The Dispute Resolution Counsellor shall refer all matters submitted for arbitration under the Market Rules to the Dispute Resolution Panel.

10.2 In all other cases the Dispute Resolution Counsellor shall within seven (7) Business Days of receiving the response to the notice of dispute or such other time as determined by the Dispute Resolution Counsellor and taking into consideration the prevailing circumstances including the urgency of the matter invite the parties to a Dispute Resolution Assessment Meeting ('DRAM').

The purpose of the DRAM shall be to:

- i. Discuss the nature of the issues in dispute and explore the possibility of the parties settling the dispute amicably by negotiation or any other alternative dispute resolution mechanism. The Office of the Dispute Resolution Counsellor may assist the parties in facilitating the negotiations;
- ii. Determine the appropriate dispute resolution procedure including the appropriate body and relevant rules as laid down in the EPSR Act and applicable rules and regulations of the Commission.
- iii. Give parties an opportunity to resolve their disputes by any other dispute resolution process apart from that which is provided for in any written agreement entered into between them subject to applicable rules and regulations of the Commission;
- iii. Inform and educate the parties about the various dispute resolution options available, evaluate the potential of each option, the possible impact on the parties and the dynamics of the dispute in order to enable them make informed decisions about available options;

- iv. Identify and design the dispute resolution process appropriate for the resolution of the dispute and the requisite organizational frame work and timelines;
  - v. Deal with other process issues and authority of representatives of the parties;
  - vi. Ensure that parties have realistic and accurate expectations about the dispute resolution process they may agree to submit to;
  - vii. Where applicable, agree on the Arbitrator or other Neutral to be appointed to effect the dispute resolution process agreed to by the parties and failing agreement by the parties, the Arbitrator or Neutral shall be appointed by the Counselor.
- 10.3 The DRAM shall be chaired by the Dispute Resolution Counsellor or any other person designated by him.
- 10.4 In considering whether a non-adversarial dispute resolution process should be employed to resolve a dispute, regard may be had to the following:
- i. The need to set a precedent;
  - ii. The dispute affects the rights of third parties who have not submitted to the utilization of the ADR processes of the Commission;
  - iii. Public record of the proceeding or its outcome is important;
  - iv. Whether allegation of fraud, abuse of office or corruption are raised in the dispute.

## **11. Further Directions**

- 11.1 Upon conclusion of the DRAM the Dispute Resolution Counsellor shall give further directions which may include the following:
- i. The record of any terms of settlement reached between the parties.
  - ii. The appropriate Commission dispute resolution body
  - iii. The appropriate dispute resolution rules
  - iv. Make an order transferring the matter to the appropriate body or neutral to be determined in accordance with the appropriate rules.
  - v. Facilitate the execution of the submission agreement **Form 6** by the parties.

## **12. Compliance with Directions**

- 12.1 The parties shall proceed to comply with the directions of the Dispute Resolution Counsellor forthwith and without any delay and in any event before the expiry of seven [7] days which time may be extended mutually by the parties or by the Dispute Resolution Counsellor upon an application by any party.

## **13.0 Commencement /Termination of Proceedings**

- 13.1. Upon determination of the appropriate dispute resolution body and mechanism, the body vested with jurisdiction to resolve the dispute will proceed with the adjudication or resolution of the dispute in accordance with the rules of the dispute resolution processes as contained in the relevant Appendix hereto.
- 13.2 In the event that the directions of the Dispute resolution Counsellor relate to mediation and the mediation process does not result in an agreement the matter will be referred back to the Dispute Resolution Counsellor for further directions to determine the appropriate mode for determination of the dispute.

## **14.0 Continuing Obligations and Stay of Orders, Directions or Proceedings**

- 14.1 Where a dispute involves the payment or recovery of monetary amounts due under the Market Rules, the Grid Code or any other Code or Rules of the Commission, other than payment of a financial penalty, the amount shall be due and payable at the time specified for payment under the Market Rules or the Grid Code, or other Code or Rules of the Commission notwithstanding the initiation of a dispute resolution process.
- 14.2 Where the dispute involves the implementation of an order made or a direction given by the Market Operator under Rules 6.2.7, 46.3.10, 46.4.5, 46.5.2, or 46.5.9 of the Market Rules or under any other Code or Rules of the Commission, the obligation to comply with the order or direction, shall be stayed until fifteen [15] days after the appointment of an Arbitrator or other Neutral, and thereafter for such period, if any, as may be determined by the Arbitrator or any other Neutral appointed pursuant to these Guidelines.
- 14.3 Where the dispute involves payment of a financial penalty imposed by the Market Operator on a Participant under the Market Rules or pursuant to the provisions of the Grid Code or provisions of any other Code or Rules of the Commission, the obligation to pay that financial penalty shall remain stayed until delivery of an award by the Arbitrator or until the dispute is resolved by any of the other dispute resolution processes in the electricity sector.

## **15. Withdrawal of Notice of Dispute**

- 15.1 If an Applicant/Claimant wishes to withdraw a Notice of Dispute, the Applicant/Claimant shall notify the Office of the Dispute Resolution Counsellor, the Respondent and any other party in writing of his intention to withdraw the Notice of Dispute.

- 15.2 The application to withdraw shall be granted on any terms that the Dispute Resolution Counsellor considers appropriate.
- 15.3 If an Applicant/Claimant does not take any step in the dispute resolution process within the time specified in these Rules or by the Dispute Resolution Counsellor, the Dispute Resolution Counsellor may declare the application to be withdrawn, unless the Applicant/Claimant shows cause why the application should not be declared withdrawn.
- 15.4 Where the application is declared by the Dispute Resolution Counsellor to have been withdrawn, the Applicant/Claimant shall pay whatever costs as determined by the Dispute Resolution Counsellor.

## **16. Notices**

Unless the parties otherwise agree or the Dispute Resolution Counsellor directs, any notice required to be given to any party to the dispute shall be deemed to have been given or received:

- i. If sent by hand at the time of the delivery;
- ii. If sent by post-paid courier to any address within Nigeria, 5 (five) Business Days after sending unless otherwise proven;
- iii. If sent by fax, subject to confirmation of uninterrupted transmission report, or by e-mail, one hour after being sent, provided that any transmission sent after 17:00 hours on any day shall be deemed to have been received at 08: hours on the following Business Day unless the contrary is shown to be the case.

## **17. Times and date**

### **17.1 Day**

For the purposes of these Guidelines “Day” means a day other than a Saturday or Sunday or a day declared to be a public holiday in Nigeria or any part thereof.

### **17.2 Time**

References to times of the day are to official time in Nigeria.

**CONTACT US**

These Guidelines are based on the dispute resolution regime of the Commission as at **[indicate date]**. Should you require any additional information you may contact us at our Headquarters located at:

NERC Headquarters  
Adamawa Plaza  
Plot 1099, First Avenue  
Off Shehu Shagari Way  
Central Business District  
P.M.B 163, Garki  
Abuja.

Telephone: \_\_\_\_\_

Contact Person: **Dispute Resolution Counsellor**

\_\_\_\_\_

\_\_\_\_\_

## APPENDIX ONE

### CODE OF PROFESSIONAL AND ETHICAL CONDUCT FOR DISPUTE RESOLUTION COUNSELLOR AND MEMBERS OF PANEL OF NEUTRALS OF THE NATIONAL ELECTRICITY REGULATORY COMMISSION ('the Commission')

#### **Article 1: Introduction**

- 1.1 This Code of Professional and Ethical Conduct ("Code of Conduct") sets out the minimum standard to be observed generally by signatories thereto and in particular when acting as an Arbitrator or other Neutrals (hereinafter called "the Neutral/s") in any dispute resolution, a breach of which amounts to professional misconduct.
- 1.2 Where any part of this Code of Conduct is inconsistent with any applicable law or the rules applicable to any dispute resolution process, the Neutral shall comply with such applicable law and/or the applicable rules.
- 1.3 This Code of Conduct shall be observed regardless of where the dispute resolution process is being conducted.
- 1.4 Neutrals shall observe any additional ethical standards or legal requirements to which he/she is personally subject and/or of the place where the dispute resolution process is being conducted.

#### **Article 2: Objectives**

- 2.1 To promote and enhance confidence in the dispute resolution processes of the Commission.
- 2.2 To promote mutual trust, respect, confidence and tolerance between the members of the Panel of Neutrals and parties to the dispute.
- 2.3 To ensure compliance with all applicable rules and regulations guiding dispute resolution processes.
- 2.4 Where the Neutral is expected to deliver a final and binding award, decision or determination, to ensure confidence, acceptance and compliance with any such award, decision or determination rendered pursuant to the dispute resolution process.

#### **Article 3: Conduct**

- 3.1 Every Neutral shall observe the highest standards of personal and professional conduct free from impropriety or the appearance of impropriety. A Neutral's personal behavior in the resolution of any dispute shall be beyond reproach.



- 3.2 Dispute resolutions shall be conducted with dignity and decorum and in such a manner as to reflect the importance and seriousness of the process.
- 3.3 Neutrals, when performing their duties in any dispute resolution process or serving on any panel, board or committee established by the Commission, have an overriding obligation to act at all times in a disinterested manner and to be faithful to the relationship of trust which exists between Neutrals, the Commission and the parties.
- 3.4 Neutrals shall not be biased nor shall they behave in a manner which might create reasonable impression of bias on the part of the Neutral.
- 3.5 Neutrals shall not permit external pressure or opinion, fear of criticism or any form of self interest to affect any decision they have to make in the performance of their duties during the dispute resolution process.
- 3.6 A neutral shall not accept any gift or substantial hospitality directly or indirectly from any party except in the presence of the other party and/or with its consent.
- 3.7 Except where a Neutral is acting as a Mediator, no Neutral shall have private communications with any party regarding the substantive issues in dispute.
- 3.8 A Neutral whose decision is final and binding on the parties shall decide all the issues submitted for determination after careful deliberation and the exercise of his own impartial and independent judgment.

#### **Article 4: Acceptance of Appointment**

- 4.1 A Neutral who has been approached to handle a dispute shall ensure that he:
  - i. Is competent and has requisite knowledge and expertise to handle the dispute resolution process in a fair and just manner;
  - ii. Is able to devote reasonable time and attention to the resolution of the dispute such that the dispute is resolved efficiently, expeditiously and in a cost-effective manner.
  - iii. Have the requisite qualification, knowledge and expertise to resolve the dispute and shall not hold himself out as having any qualification which he does not have.

#### **Article 5: Conflict of Interest and duty of disclosure**

- 5.1 A Neutral shall not, under any circumstance, participate in any dispute resolution process in which he or his relatives have a financial interest in the outcome.
- 5.2 If facts or circumstances exist which may, in the eyes of the parties, give rise to justifiable doubts as to the Neutral's impartiality or independence, the Neutral shall

disclose such facts or circumstances to the Dispute Resolution Counsellor and/or to the parties and co-Neutrals and this is obligation continues until the final resolution of the dispute.

- 5.3 The form of the disclosure shall be as provided at the end of the Code of Conduct titled 'Neutral Disclosure Form' or in such form as shall be prescribed by the Dispute Resolution Counsellor from time to time.

#### **Article 6: Trust and Confidence**

- 6.1 A Neutral shall abide by the relationship of trust and confidence which exists between the parties and unless otherwise agreed by all the parties or permitted or required by applicable law shall not disclose or use any confidential information acquired in the course of the process or for the purposes of the process.
- 6.2 This obligation of confidentiality and trust exists all throughout and after completion of the dispute resolution process.

#### **Article 7: Waiver**

- 7.1 If after 14 (fourteen) Business Days of any disclosure by the Neutral or after 14 (fourteen) Business Days of a party learning of facts or circumstances that could constitute a potential conflict of interest for a Neutral and that party does not raise any express objection with regard to the appointment of that Neutral, the party is deemed to have waived any potential conflict of interest by the Neutral based on such facts or circumstances and may not raise any objection based on such facts or circumstances at a later stage.

#### **Article 8: Compliance Mechanism**

- 8.1. Every Neutral is expected to familiarize himself with the provisions of this Code of conduct and understand the requirements contained therein. Thus claims of ignorance, good intentions or using poor judgment will not necessarily be accepted as excuses for non-compliance.

#### **Article 9: Fees**

- 9.1 In accepting an appointment as the Dispute Resolution Counsellor or a Neutral, signatories to this Code of conduct agree to the remuneration as settled by the Commission and he/she shall make no unilateral arrangements with any of the parties or their Counsel for additional fees or expenses.

#### **Article 10: Amendment and Review of the Code of Conduct**

- 10.1 The Commission reserves the right to review and amend the provisions of this Code of Conduct from time to time and any Neutral or other person who is of the opinion that the

provisions of this Code of Conduct should be modified or amended shall suggest same to the Commission in writing.

## **APPENDIX TWO**

### **NIGERIAN ELECTRICITY REGULATORY COMMISSION** **MARKET RULES ARBITRATION RULES**

#### **RULE 1**

##### **Introduction**

- 1.1 The provisions of these Rules shall be construed liberally to secure the most expeditious, just and least expensive determination on its merits, of every proceeding conducted hereunder.
- 1.2 Where no procedures are provided for in these Rules, an Arbitrator may do whatever is reasonably necessary and permitted by Applicable Law to enable the effective adjudication of any matter before the tribunal.
- 1.3 An Arbitrator may, if special circumstances or interest of justice require, or with the consent of the parties to the dispute, dispense with, supplement or vary the application of all or any part of the provisions of Rule 4 including any stipulation as to prescribed time periods, in the resolution or the attempted resolution of a dispute pursuant to these Rules.
- 1.4 The Dispute Resolution Counsellor [“the Counsellor”] shall from time to time Publish and notify the Participants of the address for service of the Counsellor.
- 1.5 Unless otherwise specified in these Rules or directed by the Counsellor or an Arbitrator, only one copy of any document is required to be served or filed under these Rules.
- 1.6 Where a dispute, in respect of which the dispute resolution process under these Rules has been initiated, involves payment of a financial penalty imposed by the Market Operator on a Participant, the obligation to pay that financial penalty shall remain stayed until delivery of an award by the Arbitrator
- 1.7 Without limiting the generality of the foregoing, where any Dispute arises, the parties concerned shall comply with the procedures set forth in these Rules and shall not make such Dispute a subject matter of any civil or other proceeding.

#### **Rule 2**

##### **Application**

- 2.1 Subject to Rule 2.3 of these Rules and 44.3.1 of the Markets Rules, the Dispute resolution procedure provided for in these Rules shall apply to:
  - [a] any dispute between the System Operator or the Market Operator or the TSP and any Participant which arises under, in connection, or in relation to these Rules or the Grid Code, including a dispute relating to any alleged violation or breach

thereof by the System Operator and the Market Operator or the TSP or a Participant, whether or not specifically identified in these Rules as a dispute to which these Rules applies;

- [b] disputes relating to an order of denial by the Market Operator of authorization to any person to participate in the Market Operator Administered Market;
- [c] a dispute between the System Operator or the Market Operator or the TSP and a Participant specified in the Market Rules or the Grid Code as being subject to resolution in accordance with or pursuant to these Rules or otherwise agreed by the System Operator or the Market Operator or the TSP and a Participant to be resolved pursuant to these Rules;
- [d] any dispute between the System Operator or the TSP and a Participant, in connection with, in relation to or arising from the terms of any agreement, including an agreement between the TSP and such Participant for connection of the Facilities of such Participant to System Operator Controlled Grid, unless the applicable agreement or contract or the Licence of a party to the dispute either provides for an alternative dispute resolution mechanism or provides that the dispute resolution regime provided in these Rules shall not be applicable;
- [e] a dispute between the System Operator and the Market Operator and a Participant or between Participants regarding the interpretation of the Market Rules or the Grid Code; and
- (f) unless Rule.2.2 applies, any other disputes between Participants where all of the Participants which are parties to the dispute consent in writing to the application thereof.

2.2 A Participant that, pursuant to Rule 2.1(f), has consented to the application of the Dispute resolution procedure provided for in these Rules may prior to the date on which a party to the Dispute issues a Notice of Dispute pursuant to Rule 4.1, withdraw its consent in the event that a Respondent to a counterclaim or cross claim, other than such Participant, objects to the application of such procedure.

2.3 The dispute resolution procedure provided for in these Rules shall not apply to the following:

- [a] any dispute relating to, connected with or arising out of an application by any person to amend a Rule or Condition, which application shall be governed by Rule 45 of the Market Rules, or a Dispute relating to validity of an Amendment to the Market Rules or the Grid Code or to any market surveillance or exercise of, or failure to exercise, a power under Rule 44 of the Market Rules;
- [b] disputes relating to a proposal to amend any provision of the Market Rules;

- [c] disputes between the Market Operator and a Participant relating to the amount chargeable by the System Operator and the Market Operator as System Operation and Market Administration Charge, unless the dispute relates to or is connected with the manner of calculation of the System Operation and Market Administration Charge payable by the Participant in any given case;
- [d] an award of an Arbitrator made pursuant to these Rules;
- [e] any dispute with respect to which the Market Rules or the Grid Code, other than these Rules, provide for an alternative dispute resolution mechanism; and
- [f] any dispute in respect to which the Market Rules or the Grid Code, provides that the dispute resolution procedure provided for in these Rules shall not apply.

### **Rule 3**

#### **Negotiation**

- 3.1 Subject to Rule 10.2 Parties to a Dispute shall within fourteen[14] days from the day the dispute arose make bona fide efforts to negotiate and resolve any Dispute between them prior to filing Notice of Dispute under Rule 4.1. Each person who is a party to a Dispute shall, to this end, designate an individual of sufficiently senior status, in its organisation with authority to negotiate the Dispute and to participate in such negotiations.
- 3.2 Parties to a Dispute shall commence the negotiation referred to in Rule 3.1:
- [a] where the Dispute involves an order, direction, instruction or other decision of the System Operator and the Market Operator, within 15 Business Days of the date of receipt of the order, direction, instruction or decision; and
  - [b] in all other cases, within 30 Business Days of the later of:
    - (i) the date on which the event that is the subject-matter of the Dispute occurred; or
    - (ii) the date on which the party initiating the negotiation became aware or, with the exercise of due diligence, ought to have become aware, of the event that is the subject-matter of the Dispute,
- 3.3 Rule 3.1 shall not apply to a dispute initiated pursuant to Rule 36.3.5 of the Market Rules with respect to a Preliminary Settlement Statement. In respect of such dispute, the parties to the dispute shall dispense with the negotiations referred to in Rule 3.1 and proceedings may be initiated by any party to the dispute by filing a Notice of Dispute in accordance with the procedures set forth in Rule 4.1 and time set forth in Rule 4.2.

## **RULE 4**

### **Commencement of Arbitration**

- 4.1 If the parties to a dispute cannot resolve the dispute within 20 Business Days after commencing negotiations, or such other period as the parties may agree pursuant to Rule 3.1, or where the dispute concerns a matter referred to in 3.3, either party to the Dispute (the “Applicant/Claimant”) may:
- [a] immediately notify the other parties to the dispute that negotiations are terminated;
  - [b] within the time specified in Rule 4.2, serve a written Notice of the Dispute (the “Notice of Dispute”) on any Respondent; and
  - [c] file with the Counsellor a copy of the Notice of Dispute, together with proof of service of the Notice of Dispute on each Respondent.
- 4.2 A Notice of Dispute shall be filed within 20 Business Days of the date of issue or receipt, as the case may be, of the notice of termination of negotiation referred to in Rule 4.1 to which the dispute relates, or in case of dispute referred to in 3.3 of the date upon which the Final Settlement Statement is published by the Market Operator.
- 4.3 The Notice of Dispute shall be in such form as established by the Counsellor, shall be signed by a person with authority to bind the Applicant/Claimant and shall specify, in reasonable detail and to the best of the Claimant’s knowledge:
- (a) the nature of and basis for the complaint;
  - (b) the Rules or Conditions in issue;
  - (c) the parties to the Dispute and the name of any person having knowledge of or who may be directly affected by the Dispute;
  - (d) a concise summary of the facts underlying the Dispute;
  - (e) the relief sought and a summary of the grounds for such relief; and
  - (f) any documentation upon which the Applicant/Claimant intends to rely in support of the complaint.
- 4.4 The Notice of Dispute shall be accompanied by a summary of the Notice of Dispute for publication in accordance with Rule 14.2(a).
- 4.5 A Respondent shall, within 10 Business Days of service of a Notice of Dispute, serve a written response (the “Response”) on the Applicant/Claimant and on any Respondent to a

cross-claim identified in the response, and shall file with the Counsellor, a copy of the Response, together with proof of service of the Response on the Applicant/Claimant and on any such Respondent.

- 4.6 The Response shall be in such form as is established by the Counsellor, and shall be signed by a person that has authority to bind the Respondent and shall specify, in reasonable detail and to the best of the Respondent's knowledge:
- (a) the information referred to in Rule 4.3, to the extent that the Respondent disagrees with the information relating thereto set forth in the Notice of Dispute;
  - (b) a concise response to the allegations made against the Respondent in the Notice of Dispute;
  - (c) where the Response includes a counterclaim or cross-claim against the Applicant/Claimant or any other Respondent, the relief sought, a summary of the grounds for such relief and the information referred to in Rule 4.3 in respect of such counterclaim or cross-claim; and
  - (d) any documents upon which the Respondent intends to rely in support of its Response, including any counterclaim or cross-claim, which was not identified by the Applicant/Claimant.
- 4.7 The Response shall be accompanied by a summary of the Response for publication in accordance with Rule 14.2(a).
- 4.8 Subject to Rules 4.9 and 4.10, the Counsellor shall reject and shall not take any further action on:
- (a) Any Notice of Dispute which fails to comply with Rule 4.3, or any Response which fails to comply with the provision of Rule 4.6, provided that such rejection shall not prejudice the right of the Applicant/Claimant or the Respondent to file a fresh Notice of Dispute or a Response, as the case may be, in accordance with these Rules within such time as the Counsellor may allow;
  - (b) with respect to a Notice of Dispute in respect of which the negotiation referred to in Rule 3.1 was not commenced within the time specified in that regard in Rule 3.2
- 4.9 Where the Counsellor rejects a Notice of Dispute or a Response pursuant to Rule 4.8, the Counsellor shall promptly notify the Applicant/Claimant or Respondent who filed the Notice of Dispute or Response, as the case may be, and shall provide written reasons for the rejection



- 4.10 The Counsellor may accept a Notice of Dispute which fails to comply with Rule 4.3 or a Response which fails to comply with Rule 4.6 if all parties to the Dispute consent to the acceptance.
- 4.11 Where the Counsellor rejects a Response pursuant to Rule 4.8 the Counsellor shall promptly refer the dispute to Arbitrators pursuant to Rule 5.1.
- 4.12 On receiving a valid Notice of Dispute and Response, the Counsellor shall notify the parties of such fact and request them to appoint Arbitrators pursuant to Rule 5.

## **RULE 5**

### **Appointment of Arbitrators**

- 5.1 Each Dispute shall be referred to a sole Arbitrator or where the parties agree to an arbitration Tribunal consisting of three Arbitrators appointed from the Commission's list of Dispute Resolution Panel.
- 5.2 In the event that the parties fails to agree for the dispute to be resolved by a sole Arbitrator within 5 Business Days of the receipt of a notice from the Counsellor pursuant to Rule 4.12, each party to the dispute shall appoint an Arbitrator from amongst the members of the Dispute Resolution Panel. In the event either party fails to appoint an Arbitrator in this regard, the Counsellor shall appoint an Arbitrator for such party. The Counsellor shall appoint the third Arbitrator from amongst the members of the Dispute Resolution Panel.
- 5.3 Where the parties agree to the resolution of the Dispute by a sole Arbitrator, the parties shall appoint the sole Arbitrator from amongst the members of the Dispute Resolution Panel within 5 Business Days of receiving the notice form the Counsellor pursuant to Rule 4.12. If the parties to the Dispute fail to agree to an Arbitrator, the Counsellor shall appoint the sole Arbitrator from amongst the members of the Dispute Resolution Panel within 3 Business Days.
- 5.4 An Arbitrator shall be independent of the parties and shall act impartially. An Arbitrator who is or becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to the Counsellor and the parties
- 5.5 Where during a pending arbitration, an Arbitrator becomes incapable of acting as an Arbitrator by reason of death, resignation, removal or otherwise, the following Rules shall apply.
- (a) If the Arbitration Tribunal comprises of three Arbitrators, the party which appointed the Arbitrator, or for whom the Arbitrator was appointed by the Counsellor, shall, within 10 Business Days of the occurrence of such vacancy, appoint a replacement Arbitrator from the remaining members of the Dispute Resolution Panel.

- (a) If the Arbitration Tribunal comprises of only one Arbitrator, the parties shall jointly appoint another member of the Dispute Resolution Panel as Arbitrator to fill the vacancy within 10 Business Days of the occurrence of the vacancy.
- 5.6 Where the party or parties, as the case may be, have failed to select a replacement Arbitrator within the period specified in Rule 5.5, the Counsellor shall appoint a member of the Dispute Resolution Panel as a replacement Arbitrator and shall notify the parties to the Dispute of the appointment in writing.
- 5.7 Any Arbitrator appointed to replace an Arbitrator who is unavailable or unable to act may continue the arbitration if the parties to the arbitration consent to such continuance. In the absence of such consent, the replacement Arbitrator shall commence the arbitration de novo.

## **RULE 6**

### **Arbitration Procedures**

- 6.1 An Applicant/Claimant shall within the period stipulated in that regard by the Arbitration Tribunal pursuant to Rule 6.6, file a written statement indicating the name and address for service of its legal counsel or other representative, and containing its submissions on each issue in Dispute with the Arbitration Tribunal and serve same on any Respondent, together with the following:
- (a) a list of all the documents that it intends to file at the arbitration;
  - (b) copies of all such documents;
  - (c) a list of witnesses that the Applicant/Claimant intends to call or that will provide written evidence-in-chief at the hearing of the arbitration; and
  - (d) a concise written summary of the anticipated evidence of each witness.
- 6.2 A Respondent shall, within the period stipulated in that regard by the Arbitration Tribunal pursuant to Rule 6.6, file a written reply to the Applicant/Claimant's written statement containing its submissions on each issue in Dispute with the Arbitration Tribunal and serve same on any Applicant/Claimant. The reply shall be accompanied by, and shall contain all such information as is required in the case of the Applicant/Claimant's written statement pursuant to Rule 6.1.
- 6.3 The Applicant/Claimant may, within such period as may be stipulated in that regard pursuant to Rule 6.6, serve and file written submissions in response to the Respondent's reply.

- 6.4 Where a Respondent has made a counterclaim or a crossclaim in its Response, the Respondent shall, for the purposes of Rules 6.1, 6.2, 6.3 and 6.5 and where appropriate of Rule 9.6 be treated as an Applicant/Claimant and the Applicant/Claimant to the Notice of Dispute shall be treated as a Respondent in respect of the counterclaim or crossclaim. For the avoidance of doubt, a crossclaim can only be made against a party to the dispute.
- 6.5 Where Rule 6.4 applies, each Respondent to the counterclaim or crossclaim shall, within such period as may be stipulated pursuant to Rule 6.1 file with the Arbitration Tribunal and serve on the Applicant/Claimant of the counterclaim or crossclaim and any other Respondent, a written reply containing its submissions on each issue in Dispute, which shall be accompanied by and shall contain all such information as is required in the case of the Applicant/Claimant's written statement pursuant to Rule 6.1 and the Applicant/Claimant in the counterclaim or crossclaim may serve and file written submissions in reply within the period stipulated in Rule 6.6.
- 6.6 The Arbitration Tribunal shall fix the date, time and place for the filing and service of the documents referred to in paragraphs (a) and (b), and shall file a notice of the date, time and place so fixed with the Counsellor.
- (a) In the case of the Applicant/Claimant, the documents referred to above are:
- (i) the written statement and other information and documentation referred to in Rule 6.1;
  - (ii) any counterclaim or crossclaim required pursuant to Rule 6.2; and
  - (iii) the reply to a Response pursuant to Rule 6.3; and
- (b) In the case of the Respondent, the documents referred to above are:
- (i) the written reply and other information and documentation referred to in Rule 6.2;
  - (ii) written reply to a counterclaim or crossclaim, where applicable and accompanying information and documentation, pursuant to Rule 6.4 provided that the date stipulated in this regard shall be no more than 60 days from the date of the service and filing referred to in Rule 6.2, or such later date as may be agreed by each party to the arbitration.

## **RULE 7**

### **Joinder of Party**

- 7.1 Any participant/individual/group or organization wishing to intervene in any arbitration proceeding under these Rules may be joined in the proceeding upon application to the Arbitration tribunal and with the consent of the parties as follows:

- [a] A participant/individual/group or organization that may be directly affected by any award made in a dispute by the Arbitration Tribunal may no less than 5 Business Days prior to the date of the hearing of the Dispute, apply to the Arbitration Tribunal, giving notice to the parties to the Dispute, for leave to be joined as a party to the Dispute, or to intervene at the hearing. The Parties to the Dispute shall be allowed to make submissions on such application.
- [b] If the Participant applying to be joined in the Dispute demonstrates that it has sufficient legal interest in the subject matter of the arbitration, as opposed to a commercial interest, and that it may be directly affected by the decision in the arbitration, the Arbitration Tribunal may with the consent of the parties grant leave to the Participant to be joined as a party to the Dispute or to intervene. The Arbitration Tribunal may impose such terms and subject such Participant to such rights of participation as the Arbitration Tribunal considers reasonable.

## **RULE 8**

### **Hearing**

- 8.1 At the hearing, the Applicant/Claimant shall provide its case in chief, followed by the Respondent in response, and then the Applicant/Claimant in reply.
- 8.2 Witnesses shall be examined under oath or affirmation and shall be cross-examined. Nothing in this Rule 8.2 shall preclude the Arbitrator from dispensing with oral examination-in-chief of a witness provided that a written statement of the witness's evidence is provided in such form as the Arbitrator may deem appropriate.
- 8.3 Unless objected to by the parties the arbitration shall be open to the public and except for Confidential Information, all documents filed will form part of the public record of the proceedings.

## **RULE 9**

### **Powers and Jurisdiction of the Arbitrator[s]**

- 9.1 The procedures governing the arbitration shall be determined by the Arbitration Tribunal, except as expressly provided herein.
- 9.2 Except with leave of the Arbitration Tribunal, no written statement or other document shall be accepted in evidence at the hearing, nor shall any witness be permitted to give evidence on behalf of an Applicant/Claimant or a Respondent at the hearing, unless the party has complied with the requirements set forth in Rules 6.1, 6.2 or 6.5, as the case maybe.

- 9.3 Any party to a Dispute may apply to the Arbitration Tribunal for an order directing such further and other production of materials as are necessary for the proper prosecution of its case, and the Arbitration Tribunal, in its discretion, order the production of such further documents, provided that the Arbitration Tribunal may not order the production by the System Operator or the Market Operator of any Confidential Information which relates to a person who is not a party to the Dispute. The Arbitration Tribunal may admit such evidence without any need to comply with the provisions of the Evidence Act. The evidence Act is not applicable to these proceedings.
- 9.4 The Arbitration Tribunal may request any agent, employee, officer or director of any party to the Dispute, to provide any information or documentation which is not Confidential Information and which the Arbitration Tribunal considers relevant to the resolution of the Dispute, and the Arbitrator shall provide any such information or documentation to the parties in advance of the hearing at which it is to be considered.
- 9.5 The Arbitration Tribunal may request any agent, employee, officer or director of any party to the Dispute, to provide it with any Confidential Information pertaining to such party which the Arbitration Tribunal considers relevant to the conduct of the arbitration, provided that the Arbitration Tribunal shall not provide any such Confidential Information to the parties in advance of the hearing at which it is to be considered. Such Confidential Information disclosed to the Arbitration Tribunal shall be kept by the Counsellor under sealed cover and in safe custody and shall not be disclosed by the Arbitrators to any person, except with the consent of the party to whom it pertains or on direction of the Commission or a court of law.
- 9.6 The Arbitration Tribunal may, upon such conditions as to confidentiality as it shall determine and upon notice to the parties, obtain expert advice concerning technical aspects of the Dispute. Arrangements for obtaining such expert advice shall be made by the Arbitration Tribunal or by such party as the Arbitration Tribunal shall determine, provided that where such arrangements are made by the Arbitration Tribunal, the Arbitration Tribunal shall provide to the parties advance notice of the identity of the expert advisor.

## **Rule 10**

### **Continuing obligations and Stay of Orders**

- 10.1 Subject to Rule 10.2, where a Dispute involves the payment or recovery of monetary amounts due under Market Rules or the Grid Code, other than payment of a financial penalty, the amount shall be due and payable at the time specified for payment under the Market Rules or the Grid Code, notwithstanding the initiation of a dispute resolution procedure whether under these Rules or otherwise.
- 10.2 Where a Dispute in respect of which the dispute resolution process under these Rules has been initiated involves the implementation of an order made or a direction given by the Market Operator pursuant to Rule 46.2.7, 46.3.10, 46.4.5, 46.5.2 or 46.5.9 of the Market

Rule then, subject to Rule 12.1(c), the obligation of the Participant to comply with the order or direction, or to discharge the financial penalty, as is applicable, shall be stayed until 15 days after the appointment of an Arbitrator, and thereafter for such period, if any, as may be determined by the Arbitrator.

## **RULE 11**

### **Cost**

- 11.1 Where, in the case of a dispute falling within the provisions of Rule 2.1(a), the Arbitration Tribunal concludes that a Participant has violated a provision of these Rules or the Grid Code, the Arbitration Tribunal may, in making the award, approve, modify or revoke any financial penalty imposed by the Market Operator or the System Operator. In so doing, the Arbitration Tribunal shall assess such damages or make such further and other orders or directions as the Arbitration Tribunal considers just and reasonable, provided that:
- (a) the financial penalty imposed on the Participant shall not be approved in whole or in part unless the Arbitration Tribunal determines that the breach of these Rules or the Grid Code, as the case may be, could have been avoided by the exercise of due diligence by the Participant or that the Participant's conduct was intentional; and
  - (b) in approving or modifying the amount of the financial penalty, the Arbitration Tribunal shall have regard to the criteria set forth in Rule 4.7.
- 11.2 Where, in the case of a Dispute coming within Rule 2.1(a), the Arbitration Tribunal concludes that the System Operator or the Market Operator has violated, misinterpreted or misapplied a Rule or Condition, the Arbitrator may, subject to Rule 11.4 and Rule 47.8 of the Market Rules, award damages not exceeding the amount claimed or make such further and other orders or directions as the Arbitration Tribunal considers just and reasonable and the Arbitration Tribunal shall direct the System Operator or the Market Operator to comply with the Market Rules and/or the Grid Code, as the case may be, or to interpret or apply the Market Rules and/or Grid Code, as the case may be, in a particular manner. Any such direction may be included in the summaries referred to in Rule 6.21.
- 11.3 In the case of a Dispute referred to in Rules 2.1(d), the Arbitration Tribunal may, subject to Rule 47.9 of the Market Rules award such damages or make such further and other orders or directions as the Arbitrator considers just and reasonable in addition to the applicable orders referred to in Rules 11.5 or 11.7, as the case may be.
- 11.4 Where any Dispute coming within Rule 43.2.1(a) relates to the terms and conditions upon which the Market Operator has authorised a person to participate in the Market Operator Administered Market, the Arbitration Tribunal may confirm, vary or set aside any

decision made by the Market Operator and may order the Market Operator to authorise such person to participate in the Market Operator Administered Market on such other terms and conditions, if any, which the Arbitration Tribunal determines are just and reasonable, provided that the terms and conditions so stipulated by the Arbitration Tribunal are consistent with these Rules and the Grid Code and are non-discriminatory. An award of the Arbitration Tribunal under this Rule 11.4 may include the direction to the Market Operator referred to in Rule 11.2, regarding application of the Market Rules and the Grid Code.

11.5 The Arbitration Tribunal may:

- (a) in the case of a Dispute referred to in Rule 2.1(b) confirm or set aside the order of the Market Operator and order the Market Operator to authorise the person to participate in the Market Operator Administered Market, on such terms and conditions, if any, which the Arbitration Tribunal determines are just and reasonable, provided that:
  - (i) no award shall be made for payment of damages to the Applicant/Claimant Participant whose Admission Application is found to have been wrongly rejected by the Market Operator; and
  - (ii) the terms and conditions determined by the Arbitration Tribunal shall be impartial and consistent with these Rules and the Grid Code;
- (b) in the case of a Dispute coming within Rules 2.1(d) and 2.1(f) issue such orders or directions as it may consider just and reasonable.

11.6 Subject to Rule 11.7 the Arbitration Tribunal may make such award as to the Costs of the Arbitration as it determines just and reasonable. Save for exceptional cases, the Arbitration Tribunal shall consider the following principles making awards relating to the Costs of the Arbitration:

- (a) where the award consists of damages for breach of these Rules or the Grid Code, costs, including the Costs of the Arbitration incurred by the successful party, shall be awarded to the successful party;
- (b) where the award consists of the imposition of a financial penalty on a Participant, costs, including the Costs of the Arbitration, shall be awarded to the Market Operator; and
- (c) where the award consists of a direction to the System Operator and the Market Operator to comply with the Market Rules and/or the Grid Code, or to interpret or apply a Market Rule or Condition in a particular manner, costs, including the Costs of the Arbitration incurred by a Participant, shall be awarded to the Participant seeking the direction.

- 11.7 The Applicant/Claimant shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration and subject to any determination in that regard, shall bear the Costs of the Arbitration in cases where:
- (b) the award consists of a determination by the Arbitration Tribunal that the Applicant is not entitled to any compensation; or
  - (c) no award as to costs is made pursuant to Rule 11.6.
- 11.8 Where the Arbitration Tribunal determines in the arbitral award that the Applicant/Claimant is entitled to compensation, the Arbitration Tribunal may determine that some or all of:
- (a) Applicant/Claimant's costs and legal expenses associated with participation in the arbitration; and
  - (b) the Applicant/Claimant's share of the Costs of the Arbitration, be recovered by the Applicant/Claimant.

Provided that where the Arbitration Tribunal makes such award as to costs, the costs shall be paid by the other party to the Dispute, including the System Operator or the Market Operator or the TSP and or other Participant, as the case may be.

- 11.9 A person who intervenes in arbitration shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration. The Arbitration Tribunal may, in appropriate circumstances, require that an intervener bear a portion of the Costs of the Arbitration.
- 11.10 Upon completion of the arbitration, the Arbitration Tribunal shall file with the Counsellor, an invoice containing an itemised statement of the Costs of the Arbitration and an allocation of such Costs of the Arbitration amongst the parties to the Dispute, together with copies of all bills and other supporting documentation relating thereto.
- 11.11 Upon receipt of the invoice referred to in Rule 12.3, the Counsellor shall submit a copy of the invoice to the parties to the Dispute and where applicable, each intervener. Any such party that is liable to pay costs pursuant to these Rules shall, within 10 Business Days of receipt of such invoice, pay to the Counsellor the amount owing thereunder. Such invoice shall create an obligation under these Rules to pay the amount specified as payable by any party in the invoice, and shall not be deemed to constitute an award by the Arbitration Tribunal under Rule 12.1, and such amount may be recovered under these Rules without prejudice to any other manner of recovery available for the recovery of such sums under the law.



## **Rule 12**

### **Award**

- 12.1 Any award made by an Arbitrator pursuant to these Rules shall:
- [a] be final and binding on the parties;
  - [b] be enforceable as an award in accordance with the provision of the Arbitration and Conciliation Act, Cap. A18, LFN 2004; and
  - [c] if not complied with, constitute an Event of Default for the purposes of Rule 46.3.1(o)46.3.1(b) of the Market Rules and notwithstanding anything in these Rules to the contrary, any order passed by the Market Operator pursuant to Rule 46.3.10 of the Market Rules shall be effective immediately.
- 12.2 The Arbitrator's decision must be reasoned, ensure the resolution of issues presented by the parties such that the resolution meets the requirements of the Act, NERC regulations and guidelines and indicate schedules for the implementation of the decision.
- 12.3 The Arbitration Tribunal shall deliver its award in writing, giving reasons therefore, within 30 days of completion of the hearing or within such longer period as may be agreed by the parties to the Dispute. Where the Arbitration Tribunal is comprised of three Arbitrators, all decisions, including the final award, shall be made by the majority of Arbitrators.
- 12.4 The Arbitration Tribunal shall immediately file a copy of its award with the Counsellor together with a brief summary of the award and the reasons therefore.
- 12.5 Upon completion of arbitration proceedings, the Arbitration Tribunal shall file the record of the proceedings with the Counsellor. Where such record contains Confidential Information in respect of which a claim for confidentiality has been confirmed by the Arbitrator pursuant to Rule 13.1, the Confidential Information, together with the stenographic record of any in camera hearings relating thereto, shall be sealed in an envelope clearly marked "CONFIDENTIAL" or otherwise identified as confidential and protected from disclosure prior to filing with the Counsellor.

## **RULE 13**

### **Confidentiality**

- 13.1 Any party may declare any document, or information contained in any document required to be produced during arbitration as Confidential Information and the party making such declaration shall provide written justification thereof to the Arbitrator[s]. If the claim of Arbitration Tribunal confirms the confidentiality of the document or information having regard where applicable to the provisions of Rule 47.4 of the Market Rules, the

Arbitration Tribunal with the consent of the parties shall establish such procedures as may be necessary to protect the confidentiality and commercial value of such document or information, including:

- (a) requirements for disclosure of same only to counsel and/or other independent advisor who has filed an undertaking as to confidentiality satisfactory to the Arbitration Tribunal; and
- (b) limiting disclosure of the document and information to hearings in camera at which only representatives of the disclosing party and such counsel and/or other independent advisor may be present.

13.2 Members of the Dispute Resolution Panel shall enter into such confidentiality agreement as may be required by the Commission.

## **RULE 14**

### **Record Keeping and Publication**

14.1 Subject to Rule 8.2, the Counsellor shall maintain a record of all dispute resolution proceedings conducted under these Rules. The Counsellor shall be responsible for ensuring that all measures are taken to prohibit access by any other person to any portion of such records which constitute Confidential Information and for this purpose, such information may be sealed and marked “CONFIDENTIAL” or otherwise labelled as being confidential, except as may be required by Applicable Law or permitted by the provisions of Rule 47.4 of the Market Rules.

14.2 The Counsellor shall, unless objected to by any party and if so, then with the approval of the Arbitration Tribunal, arrange for Publication on the Commission’s website of the following:

- (a) the summaries referred to in Rules 4.4 and 4.7;
- (b) notice of the appointment of the Arbitration Tribunal and the address for service on the Arbitration Tribunal;
- (b) notice of the date, time and place fixed for hearing pursuant to 6.6 and
- (d) a summary of the award of the Arbitration Tribunal filed pursuant to Rule 12.2.

**APPENDIX THREE**  
**NIGERIAN ELECTRICITY REGULATORY COMMISSION**  
**ARBITRATION RULES**

**RULE 1**

**Introduction**

- 1.1 This rules shall be called “the Nigerian Electricity Sector Regulatory Commission Arbitration Rule”.
- 1.2 The object of arbitration is to obtain the fair resolution of disputes by an impartial arbitrator without unnecessary delay and expense. The parties and the arbitrator undertake to do all things necessary in the achievement of this objective.
- 1.3 The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer-related disputes in the electricity sector.
- 1.4 As the procedure is designed for cost effective and inexpensive arbitration the rules provide for a "documents only" determination with provision for the submission of any other required additional evidence.
- 1.5 The Commission administers arbitrations under the procedure independently. Arbitrators are selected by appointment from the Commission's panel of experienced arbitrators.
- 1.6 The decision of the Arbitrator shall be final and binding on the parties.

**RULE 2**

**Application**

- 2.1 Disputes arising between Licensees under the EPSR Act or in respect of matters arising from the provisions of the EPSR Act between licensees and Consumers and third parties.
- 2.2 The dispute resolution procedure provided for in these Rules shall not apply to disputes arising from the operations of the Markets Rules or Grid Code.
- 2.3 Where parties have agreed to resolve their disputes under the arbitration Rules of the Commission.

## **RULE 3**

### **Commencement of Arbitration**

- 3.1 Any party to a dispute [the Claimant] shall initiate the dispute resolution procedure by notifying the other party [Respondent] and the Dispute Resolution Counsellor in writing briefly stating the nature of the dispute.
- 3.2 Within 14 days of receipt of the Notice of Dispute, the Respondent shall send to the Claimant its Response with a copy to the Dispute Resolution Counsellor.
- 3.3 The Dispute Resolution Counsellor shall within 7 business days of receiving the response or such other time as determined by the Dispute Resolution Counsellor invite the parties for Dispute Resolution Assessment Meeting.
- 3.4 Where parties fail to reach an agreement or resolve the dispute amicably pursuant to Article 3.3, the Dispute Resolution Counsellor shall within 7 business days issue a directive to the parties that the dispute be settled through arbitration in accordance with the Commission's Arbitration Rules

## **RULE 4**

### **Appointment of Arbitrator**

- 4.1 The dispute shall be resolved by a sole Arbitrator or where the parties agree to more than one Arbitrator three Arbitrators shall constitute the arbitration tribunal.
- 4.2 The Dispute Resolution Counsellor shall direct the parties to appoint an Arbitrator from the Commission's List of Panel of Arbitrators. Failing such agreement on the choice of appointment of an Arbitrator, the Dispute Resolution Counsellor upon application by either party shall appoint an Arbitrator in accordance with Rule 4.1. In the event that a panel of three is agreed the parties shall each appoint an arbitrator and the two party appointed arbitrators shall appoint a third who shall act as Presiding Arbitrator.
- 4.3 The Arbitrator shall be and remain at all times independent of the parties and the Commission and shall determine the dispute in an impartial and timely manner.
- 4.4 The Dispute Resolution Counsellor shall remove any person appointed as an Arbitrator to whom any of the licensees or other parties in the arbitration has a reasonable objection on grounds of possible bias or has an interest that may conflict with the impartial resolution of the dispute if the Dispute Resolution Counsellor considers the objection to be valid and justified.
- 4.5 If for any reason the Arbitrator appointed is unable to act, dies or resigns his appointment the Dispute Resolution Counsellor subject to the parties consent shall appoint another Arbitrator to replace him.

4.6 In the event that any of the parties refuses to act as provided the Dispute Resolution Counsellor shall take any action necessary to ensure a tribunal is constituted.

## **RULE 5**

### **Jurisdiction and Procedures for the Arbitration.**

- 5.1 The Arbitrator may adopt such procedure as he may consider appropriate with the consent of the parties that is consistent with the principles of natural justice and give fair opportunity to the parties to the arbitration to resolve the dispute in a timely manner.
- 5.2 The Arbitrator shall issue directions to the parties including that pertaining to the filing of case statement, points of defence, counterclaims and all supporting documents.
- 5.3 The Arbitrator shall have the power to direct the procedure of the arbitration including:-
- a. allowing submission of further evidence and amendment of claim, defence, counterclaim or response.
  - b. ordering the parties to produce documents for inspection provided the documents are not confidential or privileged. .
  - c. receiving and taking into account any oral or written evidence as the Arbitrator considers necessary for the determination of the dispute.
  - d. appointing an expert to report on specific issues or taking legal advice.
  - e. proceeding with the arbitration if either party fails to comply with these Rules or with the Arbitrator's direction or if either party fails to attend any meeting or inspection ordered by the Arbitrator provided that 14 days notice has been given that the arbitration shall be so determined.
- 5.4. Where the Arbitrator considers that the dispute may be resolved on documents only basis the Arbitrator shall inform the parties and subject to the parties' agreement proceed to issue an award on the basis of the documents submitted by the parties.
- 5.5 Where the parties or either of the parties objects to documents only proceedings the Arbitrator shall proceed on the basis of oral hearing and evidence.

## **RULE 6**

### **Exclusion of Liability**

- 6.1 Without prejudice to any existing rule of law, the Arbitrator shall not be liable to any party for any act or omission in connection with any arbitration conducted under the Rules, save for the consequences of fraud or dishonesty.

- 6.2 The Dispute Resolution Counsellor or Commission shall not be liable to any party for any act or omission in connection with any arbitration conducted under the Rules, save for the consequences of fraud or dishonesty.

## **RULE 7**

### **Confidentiality.**

- 7.1 The arbitral proceedings shall be private and confidential. Neither the parties, Arbitrator or Dispute Resolution Counsellor shall disclose to third parties or publish in the Commission's website any information in respect of the proceeding, award or settlement terms unless the parties otherwise agree in writing.

## **RULE 8**

### **Costs**

- 8.1 Fees prescribed by the Commission shall be payable by the Claimant upon filing a notice of dispute. Where the dispute is resolved amicably before an award is rendered or the dispute is considered not suitable for determination under these Rules, the fees paid shall be refunded net of any cost to the Commission.
- 8.2 Costs of the arbitration shall include registration fees, the Arbitrator's fees and expenses and other administrative costs in accordance with the prescribed rates fixed by the Commission.
- 8.3 The costs of the Arbitration shall be borne by the parties and in such sum as the Arbitrator may direct. The Arbitrator in making his award may require one party to pay any part of the costs of the other party where the former has acted unreasonably in any manner including exaggerating its claim or otherwise caused the other party unnecessary delay or expenses or hindered the timely process of the arbitration procedure.

## **RULE 9**

### **Award**

- 9.1 The Arbitrator must give his award within 30days after submission of all relevant documents and/or statement.
- 9.2 The Arbitrator's decision must be reasoned, ensure the resolution of issues presented by the parties such that the resolution meets the requirements of the Act, NERC regulations and guidelines and indicate schedules for the implementation of the decision.
- 9.3 The Arbitrator's award must give its decision in respect of the dispute together with its reasons in writing and forward the award to the Dispute Resolution Counsellor.
- 9.4 The Dispute Resolution Counsellor shall forward the award rendered by the Arbitrator to the parties within 21days of the receipt of the award provided all necessary fees have been paid by the parties.

9.5 Awards made under this procedure are final and binding on the parties.

## **RULE 10**

### **Enforcement of Award**

10. Where a party fails to abide by an arbitration award the successful party shall apply to the High Court for enforcement of the award.

## APPENDIX FOUR

### MEDIATION RULES

#### **Article 1: Title and Definition**

- 1.1 These Rules shall be called the “**NIGERIAN ELECTRICITY REGULATORY COMMISSION MEDIATION RULES 2010**” and hereinafter called ‘the Mediation Rules’.
- 1.2 The Mediation Rules are not unduly prescriptive in order to preserve the flexibility of the mediation process and these mediation rules shall be construed and interpreted in a liberal manner to produce a just, efficient, expeditious and cost-effective manner of resolving the dispute between the parties.
- 1.3 In these Mediation Rules:
  - 1.3.1 “Mediation Agreement” means an agreement by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them to a named Mediator. A Mediation Agreement may be in the form of a mediation clause in a contract or in the form of a separate contract;
  - 1.3.2 “Mediator” includes a sole Mediator or a panel of Mediators when more than one is appointed.

#### **Article 2: Appointment of Mediator**

- 2.1 The Mediator shall be appointed by the parties from the Panel of Neutrals of the Commission failing which the Mediator shall be appointed by the Dispute Resolution Counsellor.
- 2.2 Where the parties have agreed to appoint more than one Mediator, each party shall appoint a Mediator from the Panel of Neutrals and where the parties are unable to reach agreement on the other members of the panel of Mediators such appointment shall be made by the Dispute Resolution Counsellor.
- 2.3 The parties and the Mediator shall enter into a Mediation Agreement in the form annexed to the end of these Mediation Rules.

#### **Article 3: Duties of the Mediator**

- 3.1 The Mediator will assist the parties to explore possible options for the expeditious, efficient and cost effective resolution of their dispute by agreement between them.
- 3.2 The Mediator will not make decisions for the parties or any impose solution on the parties.



- 3.3 Unless the parties agree otherwise, the Mediator will not obtain advice or opinion in regard to any aspect of the dispute from any person who is not a party to the dispute.

**Article 4: Duties of the Parties**

- 4.1 The parties shall act in good faith in the mediation. “Good faith” means an affirmative duty to listen to the concerns and suggestions of the other party and to communicate honestly and with integrity. Good faith also means that participants come to the mediation with full authority to settle the dispute.
- 4.2 Unless the legal representatives of the parties participate in the mediation on behalf of their clients, parties are advised to secure independent legal advice before signing any formal mediation settlement agreement.

**Article 5: Stay of proceedings**

- 5.1 Where any litigation or arbitration or other judicial or quasi-judicial proceedings or any other proceeding of a final and binding nature (‘proceedings’) has been initiated by the parties, such proceedings shall be stayed by the parties until the successful completion of the mediation or its termination.
- 5.2 No litigation or arbitration or other judicial or quasi-judicial proceedings in relation to the dispute is to be commenced from the date the Mediation Agreement is signed by the parties until the termination of the mediation.

**Article 6: Conduct of the Mediation**

- 6.1 The mediation will be conducted in such manner as the Mediator considers appropriate having due regard to the nature and circumstances of the dispute as well as the need for an efficient and expeditious resolution of the dispute.
- 6.2 The Mediator may hold as many mediation sessions as suits the circumstances of the case.
- 6.3 Any document relied upon by a party and provided to the Mediator must immediately be served by the party on the other party unless it is delivered to the Mediator confidentially.

**Article 7: Representation of Parties**

- 7.1 Parties must be represented at any sitting for the mediation either personally or by proxy through their counsel or lawful holders of power of attorney.
- 7.2 Each party may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party requires.

- 7.3 Where a party being represented at the mediation by proxy or holder of a power of attorney as aforesaid or a party is a corporate body, organization or government agency, ministry or other non-natural persons, that party's representatives must be given full authority to settle the disputes and the Dispute Resolution Counselor may require proof of this authorization in writing.
- 7.4 In circumstances where it is not possible for the party's representative to be given full authority to settle, the Mediator may insist upon the party's representative should be able to communicate with the person with power to take a final decision by telecom during the mediation.

#### **Article 8: Confidentiality**

- 8.1 The mediation process is confidential.
- 8.2 Every person involved in the mediation shall keep confidential and not use for any collateral or ulterior purpose:
- 8.2.1 The fact that the mediation is to take place or has taken place;
- 8.2.3 All information (whether given orally, in writing or otherwise), produced for, or arising in relation to the mediation including the settlement agreement, if any, arising out of the mediation.
- 8.2.3 All documents, which include anything upon which evidence is recorded (including tapes and computer discs), or other information produced for, arising in relation to the mediation will be privileged and 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.
- Provided that these provisions shall not apply to information or documents which would in any event have been admissible or discoverable in any administrative proceedings, litigation or arbitration or which is necessary to implement and enforce any settlement agreement entered into at the successful completion of the mediation or to comply with any order of the court in any subsequent action, if any.
- 8.3 No recordings of any kind shall be made of any meetings of the parties with the Mediator and the Mediator should not disclose or use any information for any purpose other than the mediation.
- 8.4 None of the parties will 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 the Mediator will not voluntarily act in any such capacity without the written agreement of all the parties.

- 8.5 The parties will not subpoena the Mediator or otherwise require the Mediator to produce records, notes or to testify in any future proceedings as to information disclosed or representations made in the course of the mediation. In the event 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 reasonable costs, expenses and fees, including attorney's fees, related to the violation.

#### **Article 9: Settlement and Enforcement**

- 9.1 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.
- 9.2 The Office of the Dispute Resolution Counsellor shall be given copies of the mediation settlement agreement.
- 9.3 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 or judgment of the court or it may be enforceable as a contract.\

#### **Article 10: Termination**

- 10.1 A party may terminate the mediation by written notice to the Dispute Resolution Counsellor and the other party at any time before the signing of any mediation settlement agreement;
- 10.2 The Mediator may immediately terminate the engagement as Mediator by giving written notice to the Dispute Resolution Counsellor and the other party if after consultation with the parties, the Mediator is of the opinion that he will be unable to assist the parties to achieve resolution of the dispute.
- 10.3 Unless otherwise agreed by the parties, the mediation shall be terminated by the Mediator if the parties have not reached any settlement within 30 Business days of the appointment of the Mediator.
- 10.4 The mediation would be terminated automatically upon execution of a settlement agreement.

#### **Article 11: Costs**

The costs of the mediation shall be as contained in **Appendix 7** hereto.

## APPENDIX FIVE

### EARLY NEUTRAL EVALUATION RULES

#### **Article 1: Title and interpretation**

- 1.1 These rules shall be called the “**NIGERIAN ELECTRICITY REGULATORY COMMISSION EARLY NEUTRAL EVALUATION RULES 2010**” hereinafter called ‘the ENE Rules’.
- 1.2 The ENE Rules shall be construed and interpreted in a liberal manner to produce a just, efficient, expeditious and cost-effective manner of resolving the dispute between the parties.

#### **Article 2: Objectives**

The ENE Rules are developed to:

- i. enhance direct communication between the parties about their claims and supporting evidence;
- ii. Provide an assessment of the merits of the case by a neutral expert;
- iii. Provide a “reality check” for clients and lawyers;
- iv. Identify and clarify the central issues in dispute;
- v. assist with discovery and motion planning or with an informal exchange of key information;
- vi. facilitate settlement discussions, when requested by the parties

#### **Article 2: Procedure**

- 2.1 Apart from taking any other step he considers necessary for the evaluation, such as conducting a site visit if considered necessary, the evaluator, with expertise in the subject matter of the dispute, will hold a meeting with the parties at which:
  - 2.1.1 Each party, through representatives counsel, clients or witnesses presents the evidence and arguments supporting its case (without regard to the rules of evidence and without direct or cross-examination of witnesses);
  - 2.1.2 The evaluator shall identify areas of agreement, clarify and identify the issues in dispute and encourages the parties to enter procedural and substantive stipulations.

- 2.2 The evaluator will write an evaluation that includes, but not limited to the following:
  - 2.2.1 an assessment of the relative strengths and weaknesses of each party's case;
  - 2.2.3 the likely liability of any party, if this can be discernible from the meeting held;
  - 2.2.3 the reasons for his evaluation.
- 2.3 The evaluator will offer to present the evaluation to the parties, who may request either to:
  - 2.3.1 hear the evaluation (which must be presented if any party requests it);
  - 2.3.2 or postpone hearing the evaluation so as to do either of the following:
- 2.4 If settlement discussions do not occur or do not resolve the dispute, the evaluator may assist the parties to:
  - 2.4.1 devise a plan or strategy for sharing additional information and/or taking any other step that will encourage them to enter into meaningful settlement discussions to reduce the issues in dispute between the parties;
  - 2.4.2 realistically assess litigation costs;
  - 2.4.3 take any other action furtherance of settlement

**Article 3: Settlement and Enforcement**

- 3.1 In the event that any part of or the whole dispute is settled by the evaluator the terms of the settlement shall be written down and signed by the parties or their representatives and the evaluator. If any counsel has represented the parties, they shall attest the signature of their respective clients.
- 3.2 The Office of the Dispute Resolution Counselor shall be given copies of the Settlement Agreement.
- 3.3 Unless the parties agree otherwise, the terms of settlement reached at the end of the evaluation may be entered as a consent award in an arbitration or consent judgment and enforceable as any award or judgment of the court or it may be enforceable as a contract.

**Article 4: Termination**

- 4.1 A party may terminate the evaluation by a written declaration of a party at any time after attending the first meeting of the parties with the evaluator and before the signing of any settlement agreement;

- 4.2 The evaluator may immediately terminate the engagement as evaluator by giving written notice to the parties if after consultation with the parties, the evaluator is of the opinion that he will be unable to assist the parties any further.
- 4.3 Unless otherwise agreed by the parties, the evaluation shall be terminated by the evaluator if the parties have not reached any settlement within 30 days of his appointment.
- 4.4 The evaluation would be terminated automatically upon execution of a settlement agreement.

**Article 5: Confidentiality**

- 5.1 The evaluation process is confidential.
- 5.2 Every person involved in the evaluation shall keep confidential and not use for any collateral or ulterior purpose:
  - 5.2.1 The fact that the evaluation is to take place or has taken place;
  - 5.2.2 All information (whether given orally, in writing or otherwise), produced for, or arising in relation to the evaluation including the settlement agreement, if any, arising out of the evaluation.
  - 5.2.3 All documents, which include anything upon which evidence is recorded (including tapes and computer discs), or other information produced for, arising in relation to the evaluation will be privileged and 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 evaluation.  
  
Provided that these provisions shall not apply to information or documents which would in any event have been admissible or discoverable in any administrative proceedings, litigation or arbitration or which is necessary to implement and enforce any settlement agreement entered into at the successful completion of the evaluation or to comply with any order of the court in any subsequent action, if any.
- 5.3 No recordings of any kind shall be made of any meetings of the parties with the evaluator and the evaluator should not disclose or use any information for any purpose other than the evaluation.
- 5.4 Unless otherwise agreed by the parties:
  - 5.4.1 No party will call the evaluator 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 evaluation and the evaluator will not voluntarily act in any such capacity without the written agreement of all the parties;

5.4.2 No party will subpoena the evaluator or otherwise require the evaluator to produce records, notes or to testify in any future proceedings as to information disclosed or representations made in the course of the evaluation. In the event any party causes the evaluator to be served with a subpoena or other process in violation of this clause, such participant shall pay the evaluator's reasonable costs, expenses and fees, including attorney's fees, related to the violation.

#### **Article 6: Termination**

- 6.1 A party may terminate the evaluation process by written notice to the Dispute Resolution Counsellor and the other party at any time before notification that the report of the neutral evaluator is ready.
- 6.2 The neutral evaluator may immediately terminate the engagement by giving written notice to the Dispute Resolution Counsellor and the parties if after consultation with the parties, the neutral evaluator is of the opinion view that he will be unable to assist the parties to achieve resolution of the dispute;
- 6.3 The evaluation would be terminated automatically upon execution of a settlement agreement.

## APPENDIX SIX

### NIGERIAN ELECTRICITY REGULATORY COMMISSION EXPERT DETERMINATION RULES

#### **Article 1: Title and Interpretation**

- 1.1 These Rules shall be called the “**NIGERIAN ELECTRICITY REGULATORY COMMISSION EXPERT DETERMINATION RULES 2010**” hereinafter called “the “Expert Rules”.
- 1.2 The Expert Rules shall be construed and interpreted in a liberal manner to produce a just, efficient, expeditious and cost-effective manner of resolving the dispute between the parties.
- 1.3 The term ‘expert’ shall include a panel made up of more than one Experts.

#### **Article 2: Commencement**

- 2.1 A party [Applicant/Claimant] wishing to commence a proceeding under these Rules shall serve the Dispute Resolution Counsellor and the other party [Respondent] a Notice of Dispute in writing stating the nature of the dispute.
- 2.2 The Respondent shall within fourteen [14] business days from the date of receipt of the notice of dispute serve its response on the Dispute Resolution Counsellor with a copy to the Applicant/Claimant.
- 2.3 The Dispute Resolution Counsellor shall within seven [7] business days of receiving the response or such other time as determined by the Dispute Resolution Counsellor invite the parties for a Dispute Resolution Assessment Meeting.
- 2.4 where parties fail to reach an agreement or resolve the dispute amicably pursuant to Article 2.3, the Dispute Resolution Counsellor shall within seven [7] business days issue a directive to the parties referring the matter to the Metering Committee for determination in accordance with the Commission’s Rules on Expert Determination.

#### **Article 3: Appointment and substitution of Independent Expert**

- 3.1 Having regard to the nature of the dispute and the qualifications of the Expert required, the Dispute Resolution Counsellor shall present to the parties the names of at least 3 (three) members of the Metering Committee knowledgeable about the issues in dispute requesting them to chose one of the persons whose name appear on the list as the Expert for the purposes of determining the dispute between the parties. If the parties fail to agree on an Expert within seven [7] days of the list being presented to them, the Dispute Resolution Counsellor shall appoint the Expert. Upon the appointment of the Expert, the



Dispute Resolution Counsellor shall send to all the parties to the dispute a notice of the appointment of the Expert.

- 3.2 Where more than one Expert is to be appointed, the Dispute Resolution Counselor shall present a list of names of members of the Metering Committee to the parties for selection as members of the panel of experts. The Dispute Resolution Counsellor shall appoint members of the Panel of Experts where the parties fail to agree on its members within 7 (seven) days of the presentation of the list.
- 3.3 If the Expert acting or appointed to act under these rules resigns, withdraws, dies or refuses to act or is unable to act or is disqualified for any reason, or has delayed unreasonably in the conduct of the Expert determination the Dispute Resolution Counsellor will, upon notification by the independent expert or any party to the expert determination, on proof satisfactory to the Dispute Resolution Counsellor, having heard the Expert and the parties if they or any of them wish to be heard declare the office of independent expert vacant.
- 3.4 Unless otherwise agreed by the parties, where the office of independent expert has been declared vacant pursuant to paragraphs 3.3 above another person shall be appointed as independent expert and the procedure to be followed for the filling of the vacancy shall be at the discretion of the Dispute Resolution Counsellor.
- 3.5 The Expert Rules on the appointment and substitution of Independent Experts provided in Article 2 shall not apply where a Panel established under any of the Code or Rules of the Commission is empowered to resolve disputes between the parties and have decided to apply the Expert Rules contained herein.

#### **Article 4: Conduct of Proceedings**

- 4.1 After consultation with the parties, the Independent Expert shall conduct the expert determination in such manner as he considers most suitable for the fair resolution of the dispute and shall communicate the procedure with timelines to be followed, to the parties in writing.
- 4.2 The Expert shall have the discretion to order or permit such pleadings with documents attached thereto as may be considered necessary and he shall give each party reasonable opportunity to present his case.
- 4.3 The parties may agree that an expert determination shall be conducted on the basis of written representations and documents only, provided that nothing herein shall prevent the Expert from holding one or more oral hearings if the Expert considers it appropriate for the just and expeditious determination of the proceedings.

- 4.4 The Expert may order the parties to consult each other and jointly produce a statement of agreed facts and such statement may also outline the facts which have not been agreed by the parties.
- 4.5 After consulting the parties, the expert shall set out in writing the list of issues to be determined.
- 4.6 If any document is not supplied to the Expert and the other party within such time as the Expert shall prescribe, the Expert may proceed with the Expert determination on the basis of the documents already before Expert and in making his determination the Expert shall be entitled to make such deductions as he may think fit for the failure to supply the document.
- 4.7 The Expert may request any person who is a party to the expert determination and who is in possession of any document or information necessary for the Expert to carry out his determination to produce such document provided that such document is not confidential and /or privileged.
- 4.8 Each of the parties may make written closing submissions if so agreed by the parties or ordered by the independent expert.
- 4.9 The Expert shall act as expert and not as arbitrator.

#### **Article 5: Responsibilities of the parties**

- 5.1 The parties shall give their full co-operation to the Expert and shall make available all documents, information and materials the independent expert considers necessary and where the independent expert has decided to conduct a visit to any site or other locus in quo, the parties shall grant the Expert free access to such site or *locus in quo*.

#### **Article 6: Waiver**

- 6.1 Any party which proceeds with the proceedings without raising an objection within a reasonable time to a failure to comply with any provision or requirement of these Expert Rules, any direction or order of the independent expert, any requirement relating to the appointment of an expert or to the conduct of the proceedings shall be deemed to have waived the right to object.

#### **Article 7: Amendment of procedure and extension of time**

- 7.1 The Expert shall have the power at any time to make, amend or determine any other procedure to be followed in the expert determination as well as power to extend any time stipulated in these Expert Rules.

## **Article 8: Expert Determination and effect**

- 8.1 The Expert's determination shall be in writing in the form of an award and the Expert shall give reasons for his determination.
- 8.2 The Expert's determination shall be final and binding on the parties.
- 8.3 Every party shall be given the opportunity to participate in the process and present the party's case but the non participation of any party shall not deprive the Expert of the power to render his determination.
- 8.4 Unless the parties agree otherwise, the Expert may make such orders in his determination as the Expert considers necessary and these shall immediately be complied with by the party against whom the order was made.

## **Article 8: Confidentiality**

- 8.1 The Expert determination process is confidential.
- 8.2 Any document or information given to the Expert during the course of the process shall be used by the Expert only for the purposes of the process and shall be treated by the Expert as confidential.
- 8.3 Unless otherwise agreed by the parties, the Expert's report shall be admissible in any judicial or arbitral proceeding in which all the parties thereto were parties to the expert determination process in which the determination report was prepared.

## **Article 9: Immunity**

- 9.1 The Expert shall not be held liable for any act or omission done or made while engaged in the performance of his duties unless that act or omission complained of was done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights of any of the parties.

## **Article 10: Termination**

- 10.1 A party may terminate the process of expert determination by written notice to the Expert, Dispute Resolution Counsellor and the other party at any time before notification of the Expert's report;
- 10.2 The Expert may immediately terminate the engagement as Expert by giving written notice to the Dispute Resolution Counsellor and the other party if after consultation with the parties, the Expert is of the opinion view that he will be unable to determine the issues in dispute.

10.2 The Expert determination would be terminated automatically upon notification of the determination of the Expert to the parties.

**Article 11: Costs**

The costs of the determination shall be as contained in **Appendix 7** hereto.

## APPENDIX SEVEN

### SCHEDULE OF FEES AND COSTS

#### COSTS OF THE MEDIATION, EARLY NEUTRAL EVALUATION AND EXPERT DETERMINATION PROCESSES OF THE NIGERIAN ELECTRICITY REGULATORY COMMISSION ('the Commission')

1. The Dispute Resolution Counsellor shall request the party who has filed a Notice of dispute to pay a non-refundable registration fee to cover the cost of processing the Notice of dispute.
2. The deposit for administrative expenses shall be fixed at the discretion of the Dispute Resolution Counsellor taking into consideration the complexity of the administrative requirements for the conduct of the proceedings.
3. The fees and expenses of the Neutral shall be calculated on the basis of the time reasonably spent on the proceedings at a fixed rate or daily rate in consultation with the Neutral and the parties. Where daily rate is to be used, such daily rate shall be reasonable in amount and shall be determined by the complexity of the dispute and any other relevant circumstances.
4. The amount of the reasonable expenses of the Neutral shall be fixed by the Dispute Resolution Counsellor in consultation with the Neutral and the parties and expenses such as long distance travel expenses, local transportation, accommodation and meals telephone, courier charges, photocopying and postage shall be reimbursed at cost.
5. The parties may be requested to make a deposit on the fees and expenses of the Neutral and the determination shall not proceed until payment of the deposit has been received by the Dispute Resolution Counsellor. Supplemental payments shall be made if the deposit does not cover the fees and expenses.
6. Unless otherwise agreed, daily fees and re-imbursable expenses shall be invoiced from time to time as agreed with the Dispute Resolution Counsellor and every invoice must be paid within seven [7] Business Days of submission of the invoice to the Office of the Dispute Resolution Counsellor.
7. Parties have the duty to pay any taxes payable on any amount payable to the Neutrals.
8. Upon termination of the process, the Dispute Resolution Counsellor shall settle the total costs of the proceedings and shall, as the case may be, reimburse the parties for any excess payment or bill the parties for any balance required.
9. All the deposits and costs stated above shall be borne in equal shares by the parties, unless they agree otherwise in writing. However, any party shall be free to pay the unpaid balance of such deposits and costs should another party fail to pay its share.

10. If the proceedings terminates before a settlement is reached or the notification of the Neutral's report or a determination is made, the Dispute Resolution Counselor shall fix the costs of the proceedings at his discretion, taking into account the invoiced expenses, the stage attained in the proceedings and any other relevant circumstances.
11. A party's legal and other costs shall remain the responsibilities of that party.
12. Parties shall obtain the current schedule of applicable rates and fees from the office of the Dispute Resolution Counsellor.
12. The rules relating to the costs of any of the dispute resolution processes may be amended from time to time by the Commission.

**FORM 1**

**NIGERIAN ELECTRICITY REGULATORY COMMISSION  
DISPUTE APPLICATION FORMS**

**NOTICE OF DISPUTE**

This form shall be used by the party initiating recourse to any of the Commission’s Alternative Dispute Resolution Procedures (hereinafter called the “Applicant/Claimant”) and same shall be served on the other party (hereinafter called the “Respondent”) pursuant to the Nigerian Electricity Regulatory Commission Rules on Alternative Dispute Resolution Procedures.

*(Note: In case any section of the form is not applicable, please put in N/A)*

*(Note: if there is insufficient space, provide detail on a separate sheet in the same format)*

**1 THE UNDERSIGNED HEREBY ISSUES A NOTICE OF DISPUTE IN ACCORDANCE WITH THE NIGERIAN ELECTRICITY REGULATORY COMMISSION DISPUTE RESOLUTION PROCEDURES**

**2. DETAILS OF PARTIES**

The Applicant/Claimant

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

E-Mail \_\_\_\_\_

To: The Respondent

\_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

E-Mail \_\_\_\_\_

3. **Other Parties** [state the details of any person/group/organisation that may be affected by the dispute any, if any].

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Address \_\_\_\_\_

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Tel: \_\_\_\_\_

E-Mail \_\_\_\_\_

4. **DISPUTE:** [brief particulars of the circumstances and nature of dispute]

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5. **RULES/CODE/AGREEMENT AND NATURE OF ADR PROCEDURE** [state the relevant Rule/Code/Agreement and the applicable Alternative Dispute resolution Procedure to be adopted].

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6. **AREA OR FIELD OF ACTIVITY** [technical subject or sector; transmission, distribution, licences e.t.c]

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7. **BRIEF DESCRIPTION OF LICENCE/CONTRACT/AGREEMENT:** [enclose a copy and summarize briefly]

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8. **SUMMARY OF THE FACTS** [state the facts underlying the dispute]

9. **RELIEFS SOUGHT:** [state the grounds for the relief sought]

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10. **OTHER RELEVANT DETAILS.** [enclose documents to be relied upon]

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11. **FILING FEE:** [Enclosed is a cheque in the sum of.....payable to the Nigerian Electricity Regulatory Commission]

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**Date**

Or

\_\_\_\_\_  
**DIRECTOR**

\_\_\_\_\_  
**SECRETARY**

cc: **Dispute Resolution Counsellor**

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**FORM 2**

**NIGERIAN ELECTRICITY REGULATORY COMMISSION  
DISPUTE APPLICATION FORMS**

**RESPONSE TO THE NOTICE OF DISPUTE**

This form shall be used by the party responding to a notice of dispute (hereinafter called the “Respondent”) to the party who filed the notice of dispute (hereinafter called the “claimant/Applicant”) pursuant to the Nigerian Electricity Regulatory Commission Rules on Alternative Dispute Resolution Procedures.

*(Note: In case any section of the form is not applicable, please put in N/A)*

*(Note: if there is insufficient space, provide detail on a separate sheet in the same format)*

**1. THE UNDERSIGNED HEREBY RESPOND TO THE NOTICE OF DISPUTE IN ACCORDANCE WITH THE NIGERIAN ELECTRICITY REGULATORY COMMISSION DISPUTE RESOLUTION PROCEDURES.**

**2. DETAILS OF PARTIES**

To: Respondent

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Address

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---

Tel: \_\_\_\_\_

E-Mail \_\_\_\_\_

To Applicant/Claimant

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Address \_\_\_\_\_

---

Tel: \_\_\_\_\_

E-Mail \_\_\_\_\_

3. **Other Parties** [state the details of any person/group/organisation that may be affected by the dispute if any]

\_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

E-Mail \_\_\_\_\_

4. **CONFIRMATION OR DENIAL OF ALL OR PART OF CLAIMS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. **DISPUTE:** [brief particulars of circumstances and nature of counterclaim]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. **SUMMARY OF THE FACTS** [state the facts underlying the dispute]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. **RELIEFS SOUGHT:** [state the grounds for the relief sought]

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8. **OTHER RELEVANT DETAILS.** [enclose documents to be relied upon]

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**SIGNATURE**

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**DATE**

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**DIRECTOR**

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**SECRETARY**

cc: **Dispute Resolution Counsellor**

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**FORM 3**

**NIGERIAN ELECTRICITY REGULATORY COMMISSION  
DISPUTE RESOLUTION COUNSELLOR DIRECTIVE FORM**

In the matter of dispute referred to the Nigerian Electricity Regulatory Commission for settlement in accordance with the Commission's Alternative Dispute Resolution Procedures

**Between:**

**Applicant/Claimant:** \_\_\_\_\_

And

**Respondent:** \_\_\_\_\_

**Directions:**

1. State the outcome of the Dispute Resolution Assessment Meeting
2. State the dispute resolution procedure to be adopted and the applicable Rules.
3. State Neutral /or set a timeline for compliance on the appointment of Neutral.

\_\_\_\_\_  
**Dispute Resolution Counsellor**

\_\_\_\_\_  
**DATE**

**FORM 4**

**SIGNED DECLARATION OF NEUTRALS**

**Declaration by nominee for the position of Dispute Resolution Counsellor and membership of the Panel of Neutrals.**

In support of my nomination as a candidate for ..... *(Insert as appropriate: the position of Dispute Resolution Counsellor; membership on the Panel of Neutrals),*

1. That, except as noted below, I am not a member, officer, employee or agent of:
  - a). any person that is required to obtain a license pursuant to the provisions of the Act or any affiliate of such person: or
  - b). any person that is a System or Market Operator, a Participant, or of an affiliate of such person.
  - c). The exceptions to the above declarations are as follows:

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2. That, except as noted below, I do not have any direct or indirect legal or beneficial interest in or commercial affiliation with:
  - a). any person that is required to obtain a license pursuant to the provisions of the Act or of an affiliate of such person; or
  - b). any person that is a System or Market Operator, Participant or of any affiliate of such person.
  - c). The exception to the above declarations are as follows:

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3. That my spouse is not a member, officer, employee or agent of :

- a). any person that is required to obtain a license pursuant to the Act or of an affiliate of such person; or
- b). any person that is a System or Market Operator, Participant or of an affiliate of such person.
- c). The exceptions to the above declarations are as follows:

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4. That, except as noted below, my spouse does not have any direct or indirect legal or beneficial interest in or commercial affiliation with:

- a). any person that is required to obtain a license pursuant to the Act or of an affiliate of such person; or
- b). any person that is a System or Market Operator, Participant or of an affiliate of such person.
- c). The exceptions to the above declarations are as follows:

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5. That, except as noted below, no relative of myself or my spouse is a member, officer, employee or agent of:

- a). any person that is required to obtain a license pursuant to the Act or of an affiliate of such person; or
- b). any person that is a Participant or of an affiliate of such person.
- c). The exceptions to the above declarations are as follows:

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6. That, except as noted below, no relative of myself or my spouse has any direct or indirect legal or beneficial interest in or commercial affiliation with:

- a). any person that is required to obtain a license pursuant to the Act or of an Affiliate of such person; or
- b). any person that is a System or Market Operator, Participant or of an Affiliate of such person;
- c). the exceptions to the above declarations are as follows:

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7. I understand that, for purposes of this declaration:

- a). “Act” means the Electric Power Sector reform Act 2005.
- b). A person has a commercial affiliation with another person if the first person supplies to or receives from the other person, goods and or services other than goods or services received in the ordinary course of being a customer or a Transmitter, Distributor or Training Licensee or an affiliate of a Transmitter, Distributor or Trading Licensee or power retailer;
- c). An interest held as the beneficiary of a trust that does not permit the beneficiary to have any knowledge of the holdings of the trust is not a legal or beneficial interest;
- d). An interest in a mutual fund is not a legal or beneficial interest unless the mutual fund is operated as an investment club where:
  - i. Its shares or units are held by not more than 50 persons and its securities have never been offered to the public;
  - ii. It does not pay or give any remuneration for investment advice or in respect of trade in securities, except for normal brokerage fees; and
  - iii. All of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operation;
- e). “spouse” includes a person whom I am living in a conjugal relationship outside of marriage; and



8. I shall promptly disclose any circumstances which causes or is likely to cause a material change to any of the above declarations.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

**FORM 5**

**NEUTRAL DISCLOSURE FORM**

**IN THE MATTER**

**BETWEEN**

\_\_\_\_\_ **APPLICANT**

**AND**

\_\_\_\_\_ **RESPONDENT**

1. I hereby state that I have / do not have any past or present direct or indirect relationship with the parties, whether financial, professional or of any other relationship or any circumstances which may prejudice my duty to resolve the dispute in a fair, just, independent and impartial manner.
2. If any such relationship or circumstances develops or comes to my knowledge during the course of the dispute resolution process or if there is any change at the time in the bio-data that I have provided to the Office of the Dispute Resolution Counselor, it will also be disclosed.
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 Office of the Dispute Resolution Counselor shall bring all facts disclosed to the attention of the parties.

I HAVE NOTHING TO DISCLOSE [ ]

I HEREBY DISCLOSE THE FOLLOWING [ ]  
*(Kindly continue on a separate sheet if more space is required)*

\_\_\_\_\_  
\_\_\_\_\_

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Dated this .....day of .....

\_\_\_\_\_  
*(Name & Signature of Neutral)*

**FORM 6**

**SUBMISSION FORM**

WE the parties herein under mentioned:

APPLICANT/CLAIMANT \_\_\_\_\_  
\_\_\_\_\_

AND

RESPONDENT: \_\_\_\_\_  
\_\_\_\_\_

Pursuant to the Dispute Resolution Assessment Meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ do hereby submit the dispute which has arisen between us for settlement through:

- MEDIATION
- ARBITRATION
- EXPERT DETERMINATION
- EARLY NEUTRAL EVALUATION
- ELECTRICITY REFEREE

In accordance with the applicable rules of the Commission [or stipulate any other agreement between the parties on rules applicable subject to the EPSR Act

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
APPLICANT/CLAIMANT

\_\_\_\_\_  
RESPONDENT

**FORM 7**

**MEDIATION AGREEMENT**

**THIS MEDIATION AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN**

**Applicant/Claimant** \_\_\_\_\_

**And**

**Respondent)** \_\_\_\_\_

(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:

Applicant/Claimant

Respondent

1. The parties agree to immediately notify the Mediator and the other party of any change to the above.
2. The parties agree to act in good faith in the mediation and to work toward a satisfactory agreement.

### **Undertaking**

The Mediator:

1. undertakes to conduct the mediation in accordance with the Mediation Rules of the Commission with due diligence provided that Mediator may withdraw from the mediation upon notice to the participants, if in his opinion the mediation cannot successfully resolve the dispute between the parties;
2. shall act as impartial intermediary and will not act as an advocate for any party.

### **Indemnity**

The Parties shall jointly and severally indemnify and hold harmless the Mediator for anything done or omitted in the discharge or purported discharge of his activities unless the act or omission is shown to have been done in bad faith.

### **Role of Legal Counsel**

Legal Counsel may participate fully as advocate for their clients during the mediation, bearing in mind that it may be appropriate in mediation for the participants to speak directly to each other or to the Mediator.

**Venue, Date and Time**

The mediation will take place at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock. It is anticipated that the mediation will last for \_\_\_\_days/hours and if resolution is not achieved within this time frame, subsequently mediations may be scheduled with the agreement of all participants.

**Confidentiality**

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

**Representation**

The signatories to this Mediation Agreement jointly and severally warrant that they are fully authorized to enter into this Agreement on behalf of Parties A and B.

**Signed** on behalf of the Applicant/Claimant by:

\_\_\_\_\_

*(Full names)*

*(Full names)*

*In the presence of:*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

**Signed** on behalf of Respondent by:

\_\_\_\_\_

\_\_\_\_\_

*(Full names)*

*(Full names)*

*In the presence of:*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_



**FORM 8**

**ADR CONFIDENTIALITY AGREEMENT**

**NOT APPLICABLE TO ARBITRATION PROCEEDINGS**

BETWEEN:

\_\_\_\_\_ APPLICANT/CLAIMANT  
AND

\_\_\_\_\_ RESPONDENT

The parties have agreed participate in an Alternative Dispute Resolution Session to be conducted in accordance with the Dispute Resolution Guidelines of the Nigerian Electricity Regulatory Commission [the Commission]. In order to promote honest and open communication among the parties and the mediator, and to facilitate resolution of the dispute, the parties, their counsel and representatives and the mediator hereby agree as follows:

1. The notes, records and all statements made during the course of the mediation are privileged discussions without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any later legal or administrative proceeding whatsoever. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during the ADR proceedings.
2. Disclosure of any records, reports, or other documents received or prepared for or by the Neutral in this proceeding is not compellable. Disclosure to the Neutral does not alter the privileged character of any information provided. The Neutral shall not be subpoenaed or otherwise compelled to testify in any later proceedings, including, but not limited to civil, criminal, and administrative proceedings, and shall not be required to produce any notes or documents, as to any aspect of the dispute that was the subject of the ADR proceedings or was otherwise communicated to the Neutral in confidence.
3. The parties recognize that in this proceeding sensitive information may be disclosed upon reliance on the privilege of confidentiality. Thus, any breach of this agreement could cause irreparable injury for which monetary damages would be inadequate. Any party to this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement. Any party breaching this agreement shall be liable for and shall indemnify the non-breaching parties and the Neutral for all costs, expenses, liabilities, and fees, including attorney's fees, which may be incurred as a result of such breach.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
APPLICANT/CLAIMANT

\_\_\_\_\_  
RESPONDENT

\_\_\_\_\_  
NEUTRAL