

Aluochier Dispute Resolution Mediation Rules

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MEDIATION RULES

Rule 1 – Citation

1 Citation

These Rules may be cited as the Aluochier Dispute Resolution Mediation Rules, 2023.

Rule 2 – Interpretation

2 Interpretation

In these Rules unless the context otherwise requires —

“Chief Executive” means the Chief Executive Officer of the Institute;

“Institute” means Aluochier Dispute Resolution and includes its Board of Directors or any committee, sub-committee or Chief Executive and other staff or other body or person specifically designated by the Institute to perform the functions referred to in these Rules;

Rule 3 – Application of these Rules

3 Application of these Rules

3.1 These Rules restate Article 159 of the Constitution of Kenya, 2010 providing that: (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution. (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles – (a) justice shall be done to all, irrespective of status; (b) justice shall not be delayed; (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3); (d) justice shall be administered without undue regard to procedural technicalities; and (e) the purpose and principles of this Constitution shall be protected and promoted. (3) Traditional dispute resolution mechanisms shall not be used in a way that – (a) contravenes the Bill of Rights; (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with this Constitution or any written law.

3.2 These Rules apply to any dispute that had arisen prior to the commencement of these Rules and all disputes arising upon the commencement of these Rules, where the parties have agreed to their application.

3.3 Where any of these Rules is in conflict with a provision of another law from which the parties cannot derogate, that provision of that other law shall prevail.

3.4 These Rules include the Schedules in effect at the commencement of the mediation, as separately amended from time to time by the Institute.

3.5 These Rules incorporate the values and principles of public service provided for in Article 232(1) of the Constitution of Kenya, 2010, which include:

3.5.1 high standards of professional ethics;

3.5.2 efficient, effective and economic use of resources;

3.5.3 responsive, prompt, effective, impartial and equitable provision of services;

3.5.4 accountability for administrative acts;

3.5.5 transparency and provision to the public of timely, accurate information; and

3.5.6 fair competition and merit as the basis of appointments and promotions.

3.6 Nothing in these Rules shall prevent parties to a dispute or mediation agreement

from naming the Institute as appointing authority without submitting the mediation to the provisions of these Rules.

Rule 4 – Domestic mediation

4 Domestic mediation

4.1 A mediation is domestic if –

4.1.1 the mediation agreement provides that the mediation is to be conducted in Kenya;

4.1.2 mediation is between bodies corporate that are incorporated in Kenya or whose central management and control is exercised in Kenya;

4.1.3 the mediation is between an individual and a body corporate and –

4.1.3.1 the individual is a national of Kenya or is habitually resident in Kenya;

4.1.3.2 the body corporate is incorporated in Kenya or its central management and control is exercised in Kenya;

4.1.3.3 the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place in which the subject matter of the dispute is closely connected, is in Kenya; or

4.1.4 it is not an international mediation.

4.2 This rule applies to a domestic mediation either at the time when the mediation commences or when the mediation agreement is entered into.

Rule 5 – International mediation

5 International mediation

A mediation is international if –

5.1 the parties to a mediation agreement have their places of business in countries other than Kenya at the time of the conclusion of the mediation agreement;

5.2 one of the parties to the mediation has its place of business in a country other than Kenya;

5.3 a place where a substantial part of the commercial obligation or other relationship is to be performed, or the place where the subject matter of the dispute is closely connected, is in a country other than Kenya; or

5.4 the parties have agreed in writing that the subject matter of the mediation relates to more than one country.

Rule 6 – Commencement of mediation proceedings

6 Commencement of mediation proceedings

6.1 A person shall commence mediation proceedings by submitting a written request to the Registrar in Form A set out in Part B of the First Schedule.

6.2 The request under rule 6.1 shall contain the following information –

6.2.1 the names, addresses, e-mail addresses and telephone numbers of the parties or their representatives;

6.2.2 a reference to a mediation clause in the manner specified in Part A set out in the First Schedule, or a copy of the separate mediation agreement;

6.2.3 a reference to the contract or other legal relationship out of or in relation to which the dispute arises; and

- 6.2.4 a brief explanation of the nature of dispute, the amount involved, if any, and the specific relief sought by a party, and shall be accompanied by the registration fee set out in the Second Schedule.
- 6.3 Upon receipt of the request in rule 6.1, the Chief Executive shall forward a copy of the request for mediation together with a list of the Institute's panel of accredited mediators to all the parties, including the initiating party.
- 6.4 The respondent shall reply to the request for mediation under rule 6.3 through a written notice to the Chief Executive indicating whether the party accepts or rejects the request for mediation.
- 6.5 When the Chief Executive receives the notice under rule 6.4 communicating the respondent's acceptance of the request for mediation, the mediation shall be considered to have commenced.
- 6.6 If the respondent does not reply to the request for mediation within ten days from the date of receipt of the notice under rule 6.4, the Institute may regard it as a rejection of the request and inform the initiating party.

Rule 7 – Appointment of a mediator

- 7 Appointment of a mediator
- 7.1 There shall be one mediator in a dispute unless the parties agree otherwise.
- 7.2 The mediator shall be jointly appointed by the parties to the dispute within –
- 7.2.1 five days of receipt by the Institute of the written notice of acceptance of the request for mediation; or
- 7.2.2 such other additional time as may be allowed by the Chief Executive, on request by either party to the dispute.

Rule 8 – Appointment of mediator where parties disagree

- 8 Appointment of mediator where parties disagree
- 8.1 Where the parties disagree on the selection of a mediator and the time specified in rule 7 has lapsed, the Chief Executive shall, within five days after the time specified under rule 7 has lapsed, propose a mediator by providing the parties with the names of three mediators from the Institute's panel of accredited mediators.
- 8.2 The parties shall, within seven days of receipt of the proposed names of mediators, jointly select a mediator and inform the Registrar in writing of their selection.
- 8.3 The Chief Executive shall notify the proposed mediator selected by the parties and shall require the mediator to, within three days of receipt of the notice from the Chief Executive, confirm his acceptance or otherwise, to act as mediator in the dispute.
- 8.4 The proposed mediator shall confirm, in writing to the Chief Executive and to the parties of his decision under rule 8.3.
- 8.5 If the parties do not agree on a mediator from the names proposed under rule 8.1, each party shall reply to the Chief Executive, within seven days of receipt of the list of proposed mediators, indicating their order of preference for the proposed mediators and which of the proposed mediator is unacceptable.
- 8.6 The Chief Executive shall appoint a mediator in accordance with the order of preference submitted by the parties.
- 8.7 Where a party does not reply to the Chief Executive as is required under rule 8.1, the list of proposed mediators shall be considered as accepted by all parties, in

accordance with the order of preference indicated in the returned list.

8.8 The Chief Executive shall notify the listed mediator of the proposal to appoint him as mediator.

8.9 Where a mediator is not appointed under the foregoing rules, a mediator may be appointed at the sole discretion of the Chief Executive and the parties shall be presumed to have accepted the appointment made by the Chief Executive.

Rule 9 – Limitations of a mediator

9 Limitations of a mediator

9.1 No person shall act mediator in a dispute if that person has a conflict of interest that may affect or be perceived by the Institute or parties to affect the independence or impartiality of the mediator, unless the parties are notified in writing of the conflict of interest and they consent in writing to the appointment of that mediator.

9.2 Where a mediator is appointed and that mediator realises a circumstance that may create a perception of bias, the mediator shall immediately inform the parties and the Chief Executive.

9.3 Where a party objects to the continued service of a mediator, the mediator shall be disqualified from acting in the dispute.

9.4 The parties shall, within seven days of the disqualification, appoint a new mediator from the Institute's panel of accredited mediators and if the parties disagree on the appointment of a suitable mediator, the Chief Executive shall appoint a substitute mediator.

9.5 Where the parties reject a mediator appointed by the Chief Executive under rule 8 and rule 9.4 –

9.5.1 the Institute may consider the rejection as a failure of the request and shall inform the parties accordingly; or

9.5.2 the Chief Executive shall revoke the appointment and inform the mediator.

Rule 10 – Qualifications of a mediator

10 Qualifications of a mediator

10.1 Notwithstanding any provision in these Rules, a person shall not act as mediator unless that person –

10.1.1 is an accredited mediator on the Institute's panel of mediators;

10.1.2 is a mediator accredited by an institution recognised by the Institute; or

10.1.3 has been –

10.1.3.1 a mediator in a mediation conducted under the rules of an institution recognised by the Institute;

10.1.3.2 in at least five international mediations, to be appointed in the Institute's international mediation; or

10.1.3.3 in at least five domestic mediations, to be appointed in the Institute's domestic mediation.

Rule 11 – Role of a mediator

11 Role of a mediator

11.1 A mediator shall be independent and impartial in the discharge of his duties.

- 11.2 The mediator shall conduct the mediation in a manner that he or she considers appropriate, while taking into consideration –
- 11.2.1 the circumstances of the dispute;
 - 11.2.2 the wishes of the parties; and
 - 11.2.3 any practical considerations that may be relevant in the prompt resolution of the dispute.
- 11.3 Prior to and during the mediation, the mediator may communicate with the parties –
- 11.3.1 jointly or separately;
 - 11.3.2 either directly or through their representatives; or
 - 11.3.3 directly, by telephone, videoconference or electronically as the mediator considers it fit and just.

Rule 12 – Preliminary conference

- 12 Preliminary conference
- 12.1 Prior to the commencement of the mediation, the parties may participate in a preliminary conference with the assistance of the mediator.
- 12.2 The purpose of the preliminary conference is to enable the parties, in accordance with the mediator's directions –
- 12.2.1 to identify the issues in dispute;
 - 12.2.2 to decide on the service and exchange of documentary material relevant to the mediation, including position papers by all the parties;
 - 12.2.3 to agree, subject to rule 23.2, on the terms of engagement of the mediator including charges for cancellation, non-attendance or adjournment of a mediation session; and
 - 12.2.4 to make any other necessary arrangements for the mediation to proceed.

Rule 13 – Role of the parties

- 13 Role of the parties
- A party to mediation has a duty to act in good faith in the mediation and to co-operate with the other party in the settlement of the dispute.

Rule 14 – Authority and representation

- 14 Authority and representation
- 14.1 A party to mediation may be represented by any person and the role and personal details of the representative shall be disclosed to all parties.
- 14.2 The representative selected under rule 14.1 shall sign an undertaking to abide by the directions set by the mediator, the Institute's Code of Conduct as provided in the Fourth Schedule and the Guidelines issued from time to time.
- 14.3 A party to mediation shall have authority to settle a dispute or be represented by a person having full authority to settle the dispute, and where the authority is limited, the limits of authority shall be disclosed to the parties and the mediator.
- 14.4 The mediator may require that a party provide the proof of authority granted to his representative in such form as the mediator may determine.

Rule 15 – Confidentiality

15 Confidentiality

- 15.1 The parties and participants in a mediation shall keep all matters relating to or arising out of the mediation private and confidential unless –
- 15.1.1 the disclosure is compelled by law;
 - 15.1.2 the disclosure is necessary to give effect to a mediation agreement or to enforce an agreement reached to settle or resolve the whole or any part of the dispute;
 - 15.1.3 there is a written consent of the parties to the mediation.
- 15.2 The parties and participants in a mediation shall sign a confidentiality undertaking in the form set out in the Third Schedule.
- 15.3 Any information submitted to the mediator by a party in caucus or private session shall be considered as confidential information between the party providing the information and the mediator, unless the party providing the information consents to its disclosure to any other party to the mediation.

Rule 16 – Place and language

16 Place and language

- 16.1 The parties shall, in consultation with the mediator, select the venue for the mediation and ensure that they have the necessary administrative services required for the mediation.
- 16.2 Unless the parties otherwise agree in writing, the mediation shall be in the language of the documents in which the mediation agreement is contained.
- 16.3 Where a document is written in a language other than the language of the mediation agreement and no translation of that document is submitted by the party relying upon the document, the mediator or Chief Executive may require that party to submit a translation in a form to be determined by the mediator or the Chief Executive.

Rule 17 – Termination of the mediation

17 Termination of the mediation

A mediation may be terminated if –

- 17.1.1 the parties sign a written settlement agreement;
- 17.1.2 the mediator, after consultation with the parties, makes a written declaration that further attempts at mediation are unnecessary;
- 17.1.3 one of the parties makes a written declaration to the mediator to terminate the mediation;
- 17.1.4 on the expiry of three months of the date of the request for mediation under rule 6, unless otherwise agreed by the parties; or
- 17.1.5 the Chief Executive orders the termination as some of the monies payable under rule 19 are not paid as required by these Rules.

Rule 18 – Termination or withdrawal from mediation

18 Termination or withdrawal from mediation

- 18.1 A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or

she has reasonable grounds to suspect that –

18.1.1 the parties are involved in illegal or fraudulent conduct;

18.1.2 the parties are unable to meaningfully and reasonably participate in negotiations;

18.1.3 the parties have not acted in good faith in the mediation; or

18.1.4 the continuation of the mediation shall cause significant harm to a party or a third party.

18.2 Where a mediator suspends, terminates or withdraws from a mediation, the mediator shall –

18.2.1 maintain the obligation of confidentiality;

18.2.2 cause the least possible harm to the parties; and

18.2.3 promptly inform the Chief Executive of the termination, suspension or withdrawal.

Rule 19 – Costs

19 Costs

19.1 Unless otherwise agreed or ordered by a court or arbitral tribunal, each party to a mediation shall bear his own costs of the mediation.

19.2 The costs of the mediation shall include –

19.2.1 the professional fees of the mediator;

19.2.2 the cost of hiring the venue for the mediation including meeting rooms or breakout rooms;

19.2.3 the administrative costs, including fees for photocopying, internet access, meals and communication expenses;

19.2.4 fees for translation, or in respect of expert witnesses who attend the mediation with the consent of the parties; or

19.2.5 any other costs reasonably incurred in respect of the organisation or conduct of the mediation.

19.3 The costs of the Institute may include –

19.3.1 registration fees payable on the lodging of a request;

19.3.2 appointment fee if a mediator is appointed; and

19.3.3 any administrative costs as specified under rule 19.2.

19.4 The parties shall be jointly and severally liable for costs and expenses set out in rules 19.2 and 19.3.

Rule 20 – Administrative assistance

20 Administrative assistance

Subject to rule 16, the Chief Executive may, on the request of the mediator or the parties, arrange for translators, administrative assistance or other facilities in order to facilitate the mediation.

Rule 21 – Exclusion of liability

21 Exclusion of liability

21.1 A mediator shall not be liable for acts or omissions done in good faith in the discharge of his functions as a mediator or arising out of a settlement reached in a

mediation conducted under these Rules.

- 21.2 Subject to rule 21.1, a servant or agent of a mediator shall not be liable for an act or omission done in good faith and with due authority, in the discharge of the functions of the mediator.
- 21.3 Nothing in this rule shall affect a liability incurred by a mediator by reason of his resignation or withdrawal.
- 21.4 The Institute and the Chief Executive shall not be liable for acts or omissions done in good faith in the appointment or proposal of a mediator or for any other purpose, in the discharge of the functions of the Institute or the Chief Executive in these Rules.
- 21.5 Subject to rule 21.4, a servant or agent of the Institute shall not be liable for an act or omission done in good faith and with authority, in the discharge of the functions of the Institute or the Chief Executive to appoint or propose a mediator or for any other purpose in these Rules.
- 21.6 A statement, whether written or oral, made in the course of the mediation shall not be relied upon by any party to institute or maintain an action for defamation or any other related complaint.

Rule 22 – Role of mediator in other proceedings

- 22 Role of mediator in other proceedings
- 22.1 The mediator shall not –
- 22.1.1 act as a representative or counsel of a party to a mediation;
 - 22.1.2 appear as a witness in any arbitral or judicial proceeding; or
 - 22.1.3 advise a person on a dispute that is the subject of the mediation.
- 22.2 The parties and the mediator shall agree that they shall not –
- 22.2.1 present the mediator as a witness in any arbitral or judicial proceeding;
 - 22.2.2 summon the mediator as a witness; or
 - 22.2.3 compel the mediator to give evidence or to produce documents in any subsequent arbitration or judicial proceeding.

Rule 23 – Fees

- 23 Fees
- 23.1 The fees for international mediation or domestic mediations shall be as set out in the Second Schedule.
- 23.2 Unless otherwise agreed by the parties and the mediator, the mediator may charge a per centum rate of the fee for cancellation, non-attendance or adjournment of the mediation, which fee shall be specified in the terms of engagement of the mediator.
- 23.3 Prior to the commencement of the mediation, each party shall pay the registration fees, appointment fees, if any, and deposit the mediator's fees and administrative costs with the Institute in accordance with the Schedule of fees set out in the Second Schedule.
- 23.4 During the mediation, the Chief Executive may require additional deposits to be paid by the parties for the costs referred to in rule 19.
- 23.5 Any additional monies requested by the Chief Executive for the costs referred to in rule 19 shall be payable fifteen days after the receipt of the request for additional deposits.
- 23.6 Where the monies under rule 23.5 are not paid by the parties within the specified period –

- 23.6.1 the Chief Executive shall inform the parties so that either of the parties may make the required payment; or
- 23.6.2 the mediator may, after consultation with the Chief Executive, order the suspension or termination of the mediation.
- 23.7 The Chief Executive may use the deposit to pay the fees and disbursements incurred by the Institute and the mediator for the mediation.
- 23.8 Upon termination of the mediation, the Chief Executive shall provide a statement of the deposits to the parties and shall specify in the statement the amount received, expended and in a case of a surplus he shall return any unexpected balance to the parties.

Rule 24 – Amendment

24 Amendment

- 24.1 These Rules may be amended by the Institute from time to time.
- 24.2 These Rules applicable to the mediation shall be those in force at the time of commencement of the mediation, unless the parties have agreed otherwise.

FIRST SCHEDULE

PART A

Model Mediation Clause

“Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the Aluochier Dispute Resolution Mediation Rules, 2023 currently in force.”

PART B

FORM A – Request for Mediation

[(Rule 6.1)]

Date: (insert date of request)	
PART 1:	
To: Name (Insert name of the party/parties to be served)	
City/Town:	
Other:	

Postal Code:	
Email:	
Telephone:	
PART 2:	
Give a brief description of the agreement / contract / document containing the provision for mediation under the Aluochier Dispute Resolution Mediation Rules: (i.e. Date & clause where applicable)	
Give a brief description of the nature of dispute for mediation:	
To: Name (Insert name of the party/parties making the request)	
City/Town:	
Other:	
Postal Code:	
Email:	
Telephone:	
PART 3:	
I/We hereby (the above-named requesting party/parties) notify you of this request for mediation to be commenced under the Aluochier Dispute Resolution Mediation Rules. I/We have submitted a copy of this request and the mediation agreement for filing with the Chief Executive of Aluochier Dispute Resolution with a request that the mediation commences under these Rules.	
Signed:	Date:

SECOND SCHEDULE

[Rules 6.2.5, 23.1 & 23.3]

FEES

DOMESTIC MEDIATION

1 Registration Fee

A non-refundable registration fee to be advised by the Institute at the time of filing the request with a maximum of Kenya Shillings (KES) 1,000 payable by the party initiating mediation pursuant to rule 6.2.5 of the Rules.

2 Administrative Costs

The Administrative Costs for mediation to be advised by the Institute at the time of filing the request with a maximum of Kenya Shillings (KES) 10,000 payable by the party initiating mediation pursuant to rule 6.2.5 of the Rules.

- 3 Mediator's Fee
 - 3.1 Sum of Kenya Shillings (KES) 5,000/- for any time spent in mediation below and up to one (1) hour.
 - 3.2 Sum of Kenya Shillings (KES) 15,000/- per mediation session (*a mediation session is equivalent to time spent in mediation above one hour and not exceeding three (3) hours*); and
 - 3.3 Sum of Kenya Shillings (KES) 1,000/- per hour for review of documents and related works.

NOTE: The sum to be charged on mediator's fee for time spent in mediation above three (3) hours in a day shall be a pro-rata hourly basis at the rate of KES5,000/- per hour.

INTERNATIONAL MEDIATION

- 1 Registration Fee

A non-refundable registration fee of US Dollars (USD) 50 payable by the party initiating mediation pursuant to rule 3.5 of the Rules.
- 2 Administrative Costs

The administrative costs for mediation shall be fixed at US Dollars (USD) 250.
- 3 Mediator's Fee
 - 3.1 Sum of US Dollars (USD) 300 for any time spent in mediation below and up to one (1) hour.
 - 3.2 Sum of US Dollars (USD) 600 per mediation session (*a mediation session is equivalent to time spent in mediation above one hour and not exceeding three (3) hours*); and
 - 3.3 Sum of US Dollars (USD) 300 per hour for review of documents and related works.

NOTE: The sum to be charged on mediator's fee for time spent in mediation above three (3) hours in a day shall be on a pro rata hourly basis at the rate of USD 200 per hour.

THIRD SCHEDULE

[Rule 15]

CONFIDENTIALITY AGREEMENT AND UNDERTAKING

Parties

.....

And

.....

And

.....

("The Mediator")

Have entered into a mediation agreement dated the day of in

accordance with which the Mediator will conduct a mediation.

- 1 The undersigned acknowledge by their signatures that they attend the mediation on the basis of their agreement to the terms of clause 2 and 3 below.
- 2 Each of the undersigned undertakes to the parties and the Mediator –
 - 2.1 to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the mediation including the preliminary steps (“confidential information”);
 - 2.2 not to act contrary to the undertaking in clause 2.1 unless compelled by law to do so or with the consent of the party who disclosed the confidential information;
 - 2.3 not to use confidential information for a purpose other than the mediation.
- 3 Each of the undersigned undertakes to the parties and the Mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceeding between the parties to the mediation –
 - 3.1 any settlement proposal whether made by a party or the Mediator;
 - 3.2 the willingness of a party to consider any such proposal;
 - 3.3 any admission or concession made by a party;
 - 3.4 any statement or document made by the Mediator.
- 4 The parties acknowledge that the Mediator may disclose information obtained during or in connection with the mediation in any one or more of the following circumstances –
 - 4.1 with the consent of the person from whom the information was obtained;
 - 4.2 in connection with the fact that an agreement or arrangement has been reached and as to the substance of the agreement or arrangement;
 - 4.3 if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to any person or damage to any property;
 - 4.4 if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation, or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
 - 4.5 in accordance with a requirement imposed by or under a law of a country or a state.

.....
Signature

.....
Name

.....
Signature

.....
Name

.....
Signature

.....
Name

FOURTH SCHEDULE

[Rule 14.2]

CODE OF CONDUCT FOR MEDIATORS

The Institute adopts the Nairobi Centre for International Arbitration (NCIA) Code of Conduct for Mediators March 2021 published by the Nairobi Centre for International Arbitration, Co-operative Bank House, 8th Floor, Haile Selassie Avenue, P O Box 548-00200, Nairobi, Kenya, Email info@ncia.co.ke, Website www.ncia.or.ke.

PREAMBLE

This Code of Conduct is designed to serve as fundamental ethical guidelines for persons appointed to mediate a dispute under the Aluochier Dispute Resolution Mediation Rules at the time in effect. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute. Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

This Code of Conduct is to be read and construed in its entirety. There is no priority significance attached to the sequence in which the Principles appear. The use of the term “shall” in the Principle indicates that the mediator must follow the practice described. The use of the term “should” indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term “mediator” is understood to be inclusive so that it applies to co-mediator models. This Code of Conduct does not include specific temporal parameters when referencing mediation, and therefore, does not define the exact beginning or ending of mediation. Various aspects of mediation, including some matters defined by this Code of Conduct, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, this Code of Conduct. However, a mediator should make every effort to comply with the spirit and intent of this Code of Conduct in resolving such conflicts. This effort should include honouring all remaining Principles not in conflict with these other sources.

PRINCIPLE 1: Self-Determination

Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of the mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

1 A mediator shall conduct a mediation based on the principle of party self-determination.

1.1 Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with this Code of

Conduct.

- 1.2 A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.
- 2 A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, programme administrators, provider organisations, the media or others.

PRINCIPLE 2: Independence and Impartiality

- 1 Mediators will not first accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affect their independence or impartiality. This duty to disclose is a continuing obligation throughout the mediation process.
- 2 The existence of circumstances potentially affecting, or appearing to affect, a Mediator's independence or impartiality will not automatically imply unfitness to act as a Mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.
- 3 Mediators will always act in an independent and impartial way. They shall act in an unbiased manner, treating all parties with fairness, quality and respect. If at any time a Mediator feels unable to conduct the process in an independent and impartial manner, (s)he will express that concern and will offer to withdraw from the mediation.

Such circumstances include:

- 3.1 financial or personal interests in the outcome of the mediation;
- 3.2 existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Mediator is aware;
- 3.3 other potential sources of bias or prejudice concerning a person or institution which may affect that Mediator's independence or impartiality or reasonably create an appearance of partiality or bias.

PRINCIPLE 3: Conflicts of interest

A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

1. A prospective mediator shall accept an appointment only if they are fully satisfied that they are able to discharge their duties without bias.
2. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after mediation.
3. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.
4. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interests that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.
5. If a mediator learns any fact after accepting a mediation that raises a question with respect to

that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.

6. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.
7. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organisations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.
8. A mediator shall have a continuing duty to disclose any conflicts of interest that may become apparent during the mediation process.

PRINCIPLE 4: Competence

Training, experience in mediation, skills, cultural understandings, and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

- 1 A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.
 - 1.1 Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications.
 - 1.2 A mediator should attend educational programmes and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
 - 1.3 A mediator should have available for the parties' information relevant to the mediator's training, education, experience, and approach to conducting a mediation.
- 2 If a mediator, during the course of a mediation determines that they cannot conduct a mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing, or requesting appropriate assistance.
- 3 If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

PRINCIPLE 5: Confidentiality

- 1 Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation, including the fact of mediation being held, unless:
 - 1.1 compelled to make disclosure by law, or by a court of law, or by another independent and impartial tribunal of law, or
 - 1.2 the specific information comes into the public domain (otherwise than as a result of a disclosure by the mediator), or
 - 1.3 the parties release the mediator from the confidentiality restriction, or
 - 1.4 necessary to defend the mediator from any proceedings or charges for which (s)he risks incurring any liability.
- 2 The mediator may, however, disclose having previously served as mediator in a mediation

- involving one or more of the parties, provided none of the details of that case are disclosed.
- 3 Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the mediator that involves the disclosure of confidential information.
 - 4 At no time will mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent or is so ordered by a court.
 - 5 Reference shall be made to the Aluochier Dispute Resolution Mediation Rules, 2023 for the rule on confidentiality.

PRINCIPLE 6: The process

1. The mediator shall satisfy himself/herself that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.
2. The mediator shall ensure that prior to commencement of the mediation, the parties have understood and expressly agreed the terms and conditions of the mediation agreement including any applicable provisions relating to obligations of confidentiality on the mediator and the parties.
3. The mediation agreement shall, upon request of the parties, be drawn up in writing.
4. The mediator shall conduct the proceedings in an appropriate manner, considering the circumstances of the case, including possible power imbalances and the rule of law, any wishes the parties may express and the need for a prompt settlement of the dispute. The parties shall be free to agree with the mediator, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.
5. The mediator, if he/she deems it useful, may hear the parties separately.

PRINCIPLE 7: Quality and fairness of the process

- 1 A mediator shall conduct the mediation in accordance with this Code of Conduct and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.
 - 1.1 A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
 - 1.2 A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of mediation.
 - 1.3 The presence or absence of parties at mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.
 - 1.4 A mediator should promote honesty and candour between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of mediation.
 - 1.5 The role of mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do

so consistent with this Code of Conduct.

- 1.6 A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of the rules, statutes, or other governing authorities pertaining to mediation.
- 1.7 A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counselling, neutral evaluation or other processes.
- 1.8 A mediator shall not undertake another dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other Code of Conduct. Reference shall be made to the Aluochier Dispute Resolution Mediation Rules, 2023 for the rule on the role of a Mediator.
- 1.9 If mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, and withdrawing from or terminating the mediation.
- 1.10 If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.
- 2 If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
- 3 If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting the mediation consistent with this Code of Conduct, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

PRINCIPLE 8: Advertising and solicitation

- 1 A mediator must be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.
 - 1.1 A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
 - 1.2 A mediator should only claim to meet the mediator qualifications of a governmental entity or private organisation if that entity or organisation has a recognised procedure for qualifying mediators and it grants such status to the mediator.
- 2 A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.
- 3 A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

PRINCIPLE 9: Fees and other charges

A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with mediation. Reference shall be made to the Aluochier Dispute Resolution Mediation

PRINCIPLE 10: Advancement of mediation practice

- 1 A mediator should act in a manner that enhances the practice of mediation. A mediator promotes this Code of Conduct by engaging in some or all of the following:
 - 1.1 Fostering diversity within the field of mediation.
 - 1.2 Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
 - 1.3 Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
 - 1.4 Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
 - 1.5 Assisting newer mediators through training, mentoring and networking.
- 2 A mediator should maintain respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

PRINCIPLE 11: Professional conduct issues and complaints

1. Where an accredited mediator is subject to this Code, a party to a mediation who believes that there has been a lack of compliance with the Code may activate the complaints and disciplinary process within Aluochier Dispute Resolution.
2. A mediator will respond to, and co-operate with, any complaints procedure initiated by a party through Aluochier Dispute Resolution in relation to the Process in which the mediator acted, including attending (without charging a fee or claiming any expenses for attending) any meeting convened by Aluochier Dispute Resolution as part of that complaint's procedure.