



KECOBO Mediation Rules

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Abbreviated Expressions

Article 1

In these Rules:

“Board” means the KECOBO Mediation Board;

“KECOBO” means the Kenya Copyright Board;

“Mediator” includes any representative or representatives appointed by the Board in accordance with Article 7;

“Mediation Accreditation Committee” means the Mediation Accreditation Committee established under Section 59A of the Civil Procedure Act CAP. 21 Laws of Kenya.

“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; a Mediation Agreement may be in the form of a mediation clause in a contract or in the form of a separate contract;

Words used in the singular include the plural and *vice versa*, as the context may require.

Scope of Application of Rules

Article 2

Where a Mediation Agreement provides for mediation under the KECOBO Mediation Rules, these Rules shall be deemed to form part of that Mediation Agreement. Unless the parties have agreed otherwise, these Rules as in effect on the date of the commencement of the mediation shall apply.

Commencement of the Mediation

Article 3

- (a) A party to a Mediation Agreement that wishes to commence a mediation shall submit a Request for Mediation in writing to the Board and to the other party. The Request for Mediation shall be delivered by email or other means of electronic communication that provide a record thereof unless a party decides to use also expedited postal or courier service.
- (b) The Request for Mediation shall contain or be accompanied by:
 - (i) the names, addresses, and telephone and e-mail;
 - (ii) a copy of the Mediation Agreement;
 - (iii) a brief statement of the nature of the dispute; and
 - (iv) Supporting documentary evidence, if any.

Article 4

In the absence of a Mediation Agreement, a party that wishes to propose submitting a dispute to mediation shall submit a Request for Mediation in writing to the Board. It shall at the same time send a copy of the Request for Mediation to the other party. The

Request for Mediation shall include the particulars set out in Article 3(b) (i), (iii), and (iv). The Board may assist the parties in considering the Request for Mediation.

Article 5

The date of the commencement of the mediation shall be the date on which the Request for Mediation is received by the Board.

Article 6

The Board shall forthwith inform the parties in writing of the receipt by it of the Request for Mediation and of the date of the commencement of the mediation.

Appointment of the Mediator

Article 7

The Board shall be at liberty to appoint one or more mediators from within its members who are certified by the Mediation Accreditation committee.

By agreeing to the mediation process provided by the Board, the parties shall consent to the Board acting as the Mediator.

Article 8

The mediator shall be neutral, impartial and independent.

Representation of Parties and Participation in Meetings

Article 9

- (a) The parties may be represented or assisted in their meetings with the mediator.
- (b) Immediately after the appointment of the mediator, the names and addresses of persons authorized to represent a party, and the names and positions of the persons who will be attending the meetings of the parties with the mediator on behalf of that party, shall be communicated by that party to the other party and the mediator.

Conduct of the Mediation

Article 10

The mediation shall be conducted in the manner agreed upon by the parties, including meetings by telephone, videoconference, or using online tools. If, and to the extent that, the parties have not made such agreement, the mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted.

Article 11

Each party shall cooperate in good faith with the mediator to advance the mediation as expeditiously as possible.

Article 12

The mediator shall be free to meet and to communicate separately with a party on the clear understanding that information given at such meetings and in such communications shall not be disclosed to the other party without the express authorization of the party giving the information.

Article 13

- (a) As soon as possible after being appointed, the mediator shall, in consultation with the parties, establish a timetable for the submission by each party to the mediator and to the other party of a statement summarizing the background of the dispute, the party's interests and contentions in relation to the dispute and the present status of the dispute, together with such other information and materials as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.
- (b) The mediator may at any time during the mediation suggest that a party provide such additional information or materials as the mediator deems useful.
- (c) Any party may at any time submit to the mediator, for consideration by the mediator only, written information or materials which it considers to be confidential. The mediator shall not, without the written authorization of that party, disclose such information or materials to the other party.

Role of the Mediator**Article 14**

- (a) The mediator shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the parties.
- (b) Where the mediator believes that any issues in dispute between the parties are not susceptible to resolution through mediation, the mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the mediator considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient and most productive settlement of those issues. In particular, the mediator may so propose:
 - (i) an expert determination of one or more particular issues;
 - (ii) arbitration;
 - (iii) the submission of the last offers of settlement by each party and, in the absence of a settlement through mediation, the Board may advise on other legal avenues available to the parties.

Confidentiality

Article 15

No recording of any kind shall be made of any meetings of the parties with the mediator.

Article 16

Each person involved in the mediation, including, in particular, the mediator, the parties and their representatives and advisors, any independent experts, and any other persons present during the meetings of the parties with the mediator, shall respect the confidentiality of the mediation and may not unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation. Each such person shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

Article 17

Unless otherwise agreed by the parties, each person involved in the mediation shall, on the termination of the mediation, return, to the party providing it, any brief, document, or other materials supplied by a party, without retaining any copy thereof. Any notes taken by a person concerning the meetings of the parties with the mediator shall be destroyed on the termination of the mediation.

Article 18

Unless otherwise agreed by the parties, the mediator and the parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitration proceeding:

- (i) any views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- (ii) any admissions made by a party in the course of the mediation;
- (iii) any proposals made or views expressed by the mediator;
- (iv) the fact that a party had or had not indicated willingness to accept any proposal for settlement made by the mediator or by the other party;
- (v) any settlement agreement between the parties, except to the extent necessary in connection with an action for enforcement of such agreement or as otherwise required by law.

Termination of the Mediation

Article 19

The mediation shall be terminated:

- (i) by the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
- (ii) by the decision of the mediator if, in the mediator's judgment, further efforts at mediation are unlikely to lead to a resolution of the dispute; or
- (iii) by a written declaration of a party at any time.

Article 20

- (a) Upon the termination of the mediation, the mediator shall promptly send to the Board a notice in writing that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall send the parties a copy of the notice addressed to the Board.
- (b) The Board shall keep the said notice of the mediator confidential and shall not, except to the extent necessary in connection with an action for enforcement of a settlement agreement or as otherwise required by law, disclose either the existence or the result of the mediation to any person without the written authorization of the parties.
- (c) The Board may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

Article 21

Unless required by a court of law or authorized in writing by the parties, the mediator shall not act in any capacity whatsoever, otherwise than as a mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the dispute.

Costs

Article 22

The Board shall facilitate and offer the mediation services free of charge to the parties involved.

Exclusion of Liability

Article 23

Except in respect of deliberate wrongdoing, the Board shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.

Waiver of Defamation

Article 24

The parties and, by accepting appointment, the mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to find or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Suspension of Running of Limitation Period under the Statute of Limitations

Article 25

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under any applicable statute of limitations or an equivalent rule shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation