* **DANIELS MEDIATION RULES**
* 1. INTERPRETATION
* 1.1 In the Rules, unless the context otherwise requires:
* “day” means a full 24-hour day but does not include Saturday, Sunday, or a holiday as defined in the relevant legislation;
* “Daniels Mediation” means Daniels Mediation and Alternative Dispute Resolution of Nairobi, Kenya, one of its County Affiliates, a predecessor of Daniels Mediation, or one of its affiliates (such Daniels Consulting);
* “Mediation” means the use of an impartial third party to assist the parties to resolve a dispute, but does not include an arbitration;
* “Mediation Agreement” means a written agreement between the parties and the Mediator containing specific provisions for submitting a dispute to Mediation;
* “Mediator” means the impartial person or persons engaged to assist the parties to resolve a dispute, but does not include an arbitrator unless the arbitrator is acting as a mediator by consent of the parties;
* “County Affiliate” means a County based alternative dispute resolution (“ADR”) organization designated by Daniels Mediation. to provide ADR services in a specific region as requested by Daniels mediation and Alternative Dispute Resolution.; and
* “Rules” means the Mediation Rules of Daniels Mediation and Alternative Dispute resolution.
* 2. APPLICATION
* 2.1 The Rules shall apply where:
* the parties have agreed that the Rules apply;
* the parties have agreed to mediate in accordance with the Model Mediation Procedure of The Mediation Accreditation Committee.; or the parties have agreed to a Mediation to be administered by Daniels Mediation or The Mediation Accreditation Committee with or without reference to the rules of either body.
* If the parties have by contract or by mutual agreement provided for the Mediation of their dispute(s) in accordance with the Rules, they shall be deemed to have incorporated the Rules into their Mediation Agreement.
* If the Rules are amended by Daniels Mediation., the Rules applicable to any dispute shall be the Rules, as amended, as of the date the Mediation is initiated.
* To the extent that the Rules conflict with legislation of the Republic of Kenya or any County or of any legislation of Kenya or any rules or orders pursuant to any such legislation, the Rules shall apply except to the extent that the parties may not lawfully contract out of the provisions of any such legislation, rules, or orders.
* A failure to comply with the Rules is an irregularity and does not render the Mediation or a step, document, or settlement agreement a nullity.
* 3. VARIATION OF RULES
* 3.1 The Rules, including the Schedules hereto, may be varied by agreement of the parties.
* 4. INITIATING MEDIATION
* 4.1 A dispute to which the Rules apply may be submitted to Mediation by any party to the dispute.
* 4.2 If one or more of the parties to a dispute wish to submit that dispute to Mediation under the Rules, the Mediation shall be initiated by one or more parties to the dispute serving a written request for Mediation on every other party to the dispute.
* 5. APPOINTMENT OF MEDIATOR
* 5.1 A Mediator shall be appointed only by a process that is:
* in accordance with any nomination to which the parties have agreed;
* in accordance with any appointment procedure to which the parties have agreed; or
* in accordance with the procedure set out in Rule 5.2.
* 5.2 If the parties have not agreed to any nomination or appointment procedure:
* the parties shall pay Daniels Mediation the fee prescribed by Schedule “A” to these Rules; and provide Daniels mediation with a written statement of general information concerning the nature and extent of the dispute, including (without limitation) the type of dispute, the amount in dispute, and type of issues in dispute; within 2 weeks of receipt of the fee and materials identified in Rule 5.2(a), Daniels Mediation shall provide the parties with the resumes of three nominees;
* the selection of a Mediator shall be: by agreement of the parties, who shall inform Daniels Mediation of their selection; or
* (ii)if the parties cannot agree on a Mediator, by each party ranking the nominees (3-highest; 1-lowest) and Daniels Mediation selecting the nominee with the highest composite ranking (or, if the rankings from the parties are equal, Daniels Mediation shall make a selection from among the highest ranked nominees;
* Daniels Mediation shall forthwith inform the Mediator selected under Rule 5.2(c) of his or her selection and shall:
* forthwith appoint that Mediator; or
* (ii)if that Mediator is unable or unwilling to be appointed, repeat forthwith the procedure set out in Rules 5.2(b) and 5.2(c) above.
* 6. INDEPENDENCE AND IMPARTIALITY
* 6.1 Unless otherwise agreed by the parties after full disclosure, the Mediator shall not act as an advocate for any party to the Mediation and shall be and shall remain at all times during the Mediation:
* wholly independent;
* wholly impartial; and
* free of any personal interest or other conflict of interest in respect of the Mediation.
* 6.2 The parties agree that the Mediator is not providing legal or professional advice to any of the parties. The parties agree that the Mediator may express views or opinions on the matters at issue, and may identify evaluative approaches, and where the Mediator does so it shall not be construed as either advocacy on behalf of a party or as legal or professional advice to a party. The parties shall at all times rely exclusively on their own advisors for legal and professional advice. The parties agree that:
* Daniels Mediation is not an agent of, or acting in any capacity for, any of the parties; and
* the Mediator is acting as an independent contractor and is not an agent or employee Daniels Mediation
* 7. DISCLOSURE OF POTENTIAL DISQUALIFICATION
* 7.1 Before accepting an appointment and at all times after accepting an appointment, a Mediator shall disclose to Daniels Mediation and the parties in writing any circumstance that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality or conflict of interest in the Mediation of a dispute. Should any such circumstance be so disclosed, Daniels Mediation shall immediately notify the parties of it. If any party objects, in writing, to the Mediator based on any such disclosure, the Mediator shall immediately withdraw from the Mediation and another Mediator shall be appointed in accordance with Rule 5.
* 8. WAIVER OF POTENTIAL DISQUALIFICATION
* 8.1 A Mediator who makes disclosure of any circumstance under Rule 7 shall continue to serve as Mediator if all parties to the dispute waive, in writing, the right to object to any reasonable apprehension of a lack of independence or impartiality or conflict of interest that arises as a consequence of that disclosure.
* 8.2 Any party that:
* knows, or reasonably ought to know, of any circumstance that could give rise to a reasonable apprehension of a lack of independence or impartiality or conflict of interest on the part of a Mediator (whether or not that circumstance is disclosed under Rule 7); and proceeds with the Mediation without promptly stating an objection to that circumstance in writing shall be deemed to have waived the right to object to any reasonable apprehension of a lack of independence or impartiality or conflict of interest that arises as a consequence of that circumstance and to have complied with the requirements of Rule 8.1.
* 9. PRE-MEDIATION SESSION
* 9.1 Unless otherwise agreed by the parties, the Mediator shall, expeditiously after being appointed, arrange a session or conference call with the appropriate representative or lawyer of all parties to discuss the matters set out in these Rules and all arrangements relating to the Mediation, including, without limitation:
* the return of written material provided to the Mediator;
* disclosure of offers or counter-offers made in the course of the Mediation; and whether or not any settlement agreement is required to be in writing and executed by the parties before it is binding on the parties.
* 10. MEDIATION AGREEMENT
* 10.1 The Mediator, together with the parties, shall prepare and execute a Mediation Agreement setting out:
* the terms and conditions under which the parties are engaging the Mediator; any of the Rules that the parties agree shall not apply to the Mediation or are amended as agreed by the parties; and any additional rules that the parties agree shall apply to the Mediation.
* 10.2 If the parties are unable to agree on a Mediation Agreement, Daniels Mediation Standard Form Agreement to Mediate set out in Schedule “B” shall be used with such modifications as the parties may agree.
* 11. TIME AND PLACE
* 11.1 The Mediator shall, following consultation with the parties, fix the time of each Mediation session. All sessions shall be held at either:
* a location in the City or County stipulated in the model clause, if relevant; or a location agreed upon by the parties and the Mediator.
* 12. AUTHORITY OF THE MEDIATOR
* 12.1 The Mediator shall attempt to assist the parties to reach a satisfactory resolution of their dispute but has no authority to impose a settlement. The Mediator is authorized to conduct joint and separate sessions with the parties at the discretion of the Mediator.
* 12.2 If the parties are unable to reach a settlement in the Mediation process, and if all parties and the Mediator agree, the Mediator may produce for the parties a non-binding recommendation for terms of settlement. This recommendation shall be the Mediator’s reasonable attempt to find acceptable settlement terms.
* 12.3 The Mediator may retain experts or consultants if the parties so agree and the parties agree to pay for the expenses of such experts or consultants, in equal amounts unless otherwise agreed by the parties.
* 13. REPRESENTATION
* 13.1 Each party must attend the Mediation. The name and address of any lawyer or agent who intends to attend the Mediation must be communicated, in writing, to the Mediator and to other parties at least three days before the first Mediation session. If any party intends to have any other individuals, such as experts, advisors, or any other persons, attend the Mediation, the name(s) and capacity of such individuals must be communicated to the Mediator and the other parties at least three days before the first Mediation session.
* 13.2 Parties who attend the Mediation must have authority to settle the dispute.
* 14. PRIVACY
* 14.1 The Mediation shall be held in private. Only those persons authorized by Rule 13 may attend, unless otherwise agreed by the parties.
* 15. CONFIDENTIALITY AND DISCLOSURE
* 15.1 The parties and the Mediator shall agree on the extent of documentary disclosure required for an effective Mediation, but the Mediator shall not have the power to compel the disclosure of any document.
* 15.2 The Mediator shall inform the parties of the confidential nature of Mediation.
* 15.3 The Mediator, the parties, their experts and advisors, and any other persons who accompany the parties to the Mediation shall keep confidential and shall not disclose to any non-party all information, documents, and communications that are created, disclosed, received, or made available in connection with the Mediation except with the parties’ written consent; when ordered to do so by a court of competent jurisdiction or otherwise required to do so by law; when the information or documents disclose an actual or potential threat to human life; in respect of any report or summary that is required to be prepared by the Mediator; where the data about the Mediation is for research and education purposes, and where the parties and the dispute are not, and may not reasonably be anticipated to be, identified by any such disclosure; or where the information is, or the documents are, otherwise available to the public.
* 15.4 Within 30 days after the Mediation’s conclusion, the Mediator shall destroy all information, documents, and communications created by, disclosed to, received by, or made available to the Mediator in connection with the Mediation unless otherwise agreed by the parties. The Mediator shall obtain, in writing, from all experts and consultants engaged by the Mediator and any other person who accompanies the parties, commitments to similar obligations of confidentiality as are provided for in this Rule.
* The Mediator shall maintain confidentiality in the storage and disposal of Mediation notes, records, files, information, documents, and communications.
* If the Mediator holds private sessions (including breakout sessions and caucuses) with one or more parties, he or she shall discuss the nature of such sessions with all parties before commencing such sessions. In particular, the Mediator shall inform the parties of any limits to confidentiality applicable to information disclosed during private sessions.
* The parties agree that Mediation sessions are without prejudice settlement negotiations and disclosures are inadmissible in any further litigation or arbitration except to the extent required by law. The parties agree not to subpoena or otherwise require the Mediator to testify or produce records or notes in any future proceedings. No transcripts shall be kept of the proceedings.
* The parties agree that they shall not rely on or introduce as evidence in subsequent arbitral or judicial proceedings any of the following, with the exception of information otherwise produced through the discovery process:
* any views expressed, suggestions made or offers made to or received from any other party in respect of the possible settlement of the dispute;
* any admissions made by any other party in the course of the Mediation;
* the fact that any other party had indicated a willingness to accept a proposal or recommendation for settlement made by the Mediator; or
* proposals made or views expressed by the Mediator.
* SUSPENSION OR TERMINATION OF MEDIATION
* The Mediator may suspend the Mediation:
* upon written request by one or more of the parties; or by issuing a written declaration that further efforts at Mediation would not be useful at this time and that the Mediation is suspended.
* The Mediation is terminated: by the execution of a settlement agreement by the parties; by the issuance of a written declaration of one or more parties that the Mediation is terminated; or by the issuance of a written declaration by the Mediator that further efforts at Mediation would not be useful at this time and that the Mediation is terminated.
* 17. EXCLUSION OF LIABILITY
* 17.1 Daniels Mediation is not liable to any party for any
* act or omission in connection with a Mediation conducted under the Rules. In any event, Daniels Mediation is not responsible for any loss or damage incurred by any party or any other person arising from negligence or any other cause whatsoever.
* 18. FEES AND EXPENSES
* 18.1 The parties shall bear equally and pay the Mediator’s fee and all expenses, including travel and the rental of premises, and the costs and expenses of any expert or consultant engaged by the Mediator in accordance with Rule 12.3, unless otherwise agreed by the parties. Such fees shall be paid directly to the Mediator in accordance with the agreement to mediate signed by the parties.
* 18.2 The parties shall pay to Daniels Mediation the fees provided in Schedule “A”.
* 18.3 The Mediator may require the parties to pay an initial deposit and further deposit or deposits, including proportionate shares of the costs of the Mediation.
* 18.4 Each party shall bear its own costs and expenses for participating in the Mediation, unless otherwise agreed by the parties.
* 19. EDUCATIONAL PURPOSES
* 19.1 The Mediator and Daniels Mediation may disclose information and data about the Mediation for research and educational purposes only if the parties and the dispute are not, nor may reasonably be anticipated to be, identified by such disclosure.
* SCHEDULE “A” MEDIATION ADMINISTRATIVE FEE SCHEDULE
* Please call your County Affiliate for fees charged with respect to selecting a mediator under Rule 5.2(a)(i)
* **SCHEDULE “B” ADR DANIELS MEDIATION**
* **STANDARD FORM AGREEMENT TO MEDIATE**
* THE PARTIES
* Party 1: Address, Phone, Email
* Party 2: Address, Phone, and E-mail:

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* Mediator:
* Address, Phone, and E-mail:
* **THE DISPUTE**
* **BRIEF DESCRIPTION OF THE DISPUTE**:
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* **MEDIATION**
* The parties shall attempt to settle the dispute by Mediation, following the provisions of this Standard Form Agreement and the National Mediation Rules of Daniels Mediation (the “Rules”), which are incorporated as part of this Agreement to Mediate. Variations to the Rules are noted below:
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* THE MEDIATOR
* The Mediator shall be bound by Daniels Mediation Code of Conduct for Mediators.
* The Mediator shall discuss and arrange for the implementation of the exchange of information and briefs at least 2 weeks before the date of Mediation, unless otherwise agreed by the parties.
* **FEES AND EXPENSES**
* All parties shall bear their own costs for the Mediation process, and shall bear equally and pay the expenses of the Mediation and the Mediator’s fees inclusive of all deposits requested by the Mediator, unless otherwise agreed by the parties.
* The Mediator’s fees are as follows:
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* **CANCELLATION OR DELAY**
* It is agreed that any party causing either cancellation of the Mediation or a postponement within 30 business days preceding the Mediation shall be responsible for all costs incurred by the Mediator, along with any cancellation fees.
* Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Party 1
* Party 2
* Party 3
* Party 4
* Mediator