



The Utilities Regulation and Competition Authority Alternative Dispute Resolution (ADR) Scheme for Disputes Between Licensees

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UTILITIES REGULATION & COMPETITION AUTHORITY

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1. Introduction

- 1.1 The Utilities Regulation and Competition Authority (URCA)¹ is the independent regulator and competition authority for the electronic communications sector (ECS) in The Bahamas with powers under the Communications Act, 2009 (Comms Act) to, *inter alia*, issue regulatory and other measures for the purpose of carrying into effect the electronic communications policy objectives.
- 1.2 The regulatory measures contained in this document are issued by URCA in accordance with section 15 of the Comms Act and sets out the procedures URCA expects to follow when resolving disputes between licensees in the ECS.
- 1.3 **This ADR Scheme is designed to provide practical guidance in the step by step handling of disputes by URCA between licensees** and to inform the parties to a dispute of the level of response and action to be expected from URCA in the ADR process.
- 1.4 The procedures contained herein indicate URCA's current thinking and URCA will therefore update this document from time to time to take account of best practice and to reflect developments in alternative dispute resolution. Although this ADR Scheme sets out the procedures URCA expects to follow when resolving disputes between licensees, it does not have binding legal effect. Should URCA decide to depart from any of the procedures herein, URCA will inform the parties of its reasons for doing so.

2. General Background

- 2.1 Liberalisation in the ECS, consequential to the establishment of the new regulatory regime in The Bahamas in September 2009, is intended to increase sustainable competition within the sector. It is widely recognised that an essential requirement for the progression of a liberalised, competitive communications sector is a well-structured, robust and transparent set of schemes and procedures for the timely and effective resolution of disputes.
- 2.2 With liberalisation, the increase in the number of new licensees providing a wider range of electronic communications services to consumers impacts the level and scope of disputes in the sector. As such, URCA has developed this ADR scheme to specifically address disputes escalated to URCA consequential to unresolved disputes between licensees. In line with URCA's statutory mandate, URCA has implemented this ADR

¹ Established under section 3 of the Utilities Regulation and Competition Authority Act, 2009

scheme which is designed to comply with the legislation while at the same time provide a simple, timely and cost effective process for the affected parties.

3. Status and Effect of this ADR Scheme

- 3.1 This ADR Scheme sets out the form and manner in which dispute referrals should be made and the approach URCA expects to take when resolving any Dispute it accepts, taking into account that each Dispute will be assessed on its merits.
- 3.2 Notwithstanding anything contained in this ADR Scheme, nothing herein operates so as to limit or exclude any legal rights or remedies of any person to which they apply. Particularly, nothing herein derogates from or substitutes for any right or remedy such person may have under the Comms Act or any other law.
- 3.3 This ADR Scheme will be reviewed and amended periodically as appropriate in light of further industry experiences, developing law and best practice, and any changes to URCA's powers and responsibilities. Although this ADR Scheme sets out the procedures and approach URCA expects to take, it will not have binding effect on URCA to the extent that it fetters URCA's discretion in advance. Should URCA decide to depart from the procedures under this ADR Scheme in warranted circumstances, URCA will notify the parties and give full reasons for doing so.
- 3.4 This ADR Scheme shall take effect immediately upon publication to the URCA website.

4. Scope of this ADR Scheme

- 4.1 Broadly, this ADR Scheme explains how URCA would receive and resolve disputes referred to it by licensees. This ADR Scheme therefore sets out the following:
 - (a) the form and manner in which a Dispute should be referred to URCA;
 - (b) the information/evidence URCA requires in order to determine whether there are grounds for URCA to exercise its statutory powers to resolve a Dispute;
 - (c) the information URCA expects parties to a Dispute to submit to URCA during the course of the ADR process to enable URCA to properly determine the issues under Dispute;
 - (d) the procedure URCA intends to adopt when resolving a Dispute;
 - (e) timelines parties to a Dispute can expect URCA to take when resolving a Dispute; and
 - (f) the regulatory or other measures available to URCA consequential to determining a Dispute.

- 4.2 The procedures under this ADR Scheme constitute only one approach to how URCA deals with issues raised by the industry. This ADR Scheme does not cover URCA's regulatory intervention in respect of complaints, which are the subject of separate Guidelines. This ADR Scheme therefore does not provide for the following:
- (a) disputes between consumers and licensees (which are covered under the Alternative Dispute Resolution (ADR) Scheme for Disputes Between Consumers and Licensees);
 - (b) disputes/complaints regarding broadcast content, which are covered by ECS 06/2012 "*Content Regulation: Code of Practice for Content Regulation*"²; and
 - (c) complaints regarding breach of the competition provisions of the Comms Act or licence conditions³, which are covered by *ECS COMP. 1 through 9*.
- 4.3 A complaint submitted to URCA will be subject to URCA's general investigative powers under the Comms Act and resolved in a manner that is appropriate either under the Comms Act or any other procedure established by URCA.

5. What is a "Dispute"

- 5.1 In order to properly establish the ambit of this ADR Scheme, a clear and concise working definition of the term "Dispute" is essential.
- 5.2 It is expected that parties to a dispute will have differing positions on which transactions between themselves may be considered a Dispute. A common definition for the term "Dispute" brings a greater level of certainty when determining the full nature and scope of the transactions between the parties to which the procedures set out under this ADR Scheme should apply. The following working definition will be applied across the sector:
- Dispute means:** *"any unresolved matter in contention between two or more licensees where one or both parties is aggrieved by the decision or conduct of the other and the parties have failed to reach an amicable resolution after good faith effort has been made to resolve the matter in contention"*.
- 5.3 The working definition for the term "Dispute" is expected to lessen potential uncertainty for the parties to a Dispute as it may not always be apparent whether a matter or issue between the parties, in fact, constitutes a Dispute.

² See particularly section 10 of the Content Code.

³ See particularly ECS COMP. 9.

6. Overview of the ADR Scheme

- 6.1 Prolonged unresolved disputes between licensees can have an adverse impact on consumers and the ECS as a whole. This ADR Scheme for resolving disputes between licensees also allows for mediation in certain matters. Therefore, the Mediation Rules contained in Annex B herein will govern the mediation process for resolving disputes between licensees.
- 6.2 An arbitration process under this ADR Scheme for resolving disputes between licensees is established where such disputes have been referred to URCA for arbitration by the parties or following a detailed analysis of all submissions by the parties to a Dispute. URCA may, at its sole discretion, refer disputes between licensees to a Dispute Resolution Panel.
- 6.3 This ADR Scheme for resolving disputes between licensees also allows URCA, where necessary, to take the appropriate regulatory and other measures in exercise of its powers under the Comms Act to effectively resolve such disputes.

7. General Procedures Under this ADR Scheme

- 7.1 This section sets out the general procedures URCA expects to follow in respect of resolving disputes between licensees.

7.2 High Level Principles

- 7.2.1 All regulatory and other measures taken by URCA in resolving disputes between licensees shall be proportionate to their purpose and issued in a manner that is transparent, fair and non-discriminatory⁴. As such, URCA will adhere to the high level principles of transparency, fairness, proportionality, accountability and natural justice when establishing and implementing this ADR Scheme.
- 7.2.2 In order to comply with the requirements at law relating to transparency, URCA shall:
- (a) publish the scope or summary of any dispute on its website (having regard to any commercially sensitive information);
 - (b) publish the outcome of the resolution of a Dispute; and
 - (c) publish URCA's Final Decision on its website (which will provide the reasons for the decision).
- 7.2.3 Parties to a Dispute are expected to make good faith efforts to resolve the issues in dispute before referring a Dispute to URCA. By the time a Dispute is submitted to URCA,

⁴ In accordance with section 8 of the Utilities Regulation and Competition Act, 2009

there should have been serious efforts demonstrated by the parties to resolve the issues between themselves. Parties would not be allowed to use this ADR Scheme as a replacement of commercial negotiations.

7.3 Application of this ADR Scheme

7.3.1 This ADR Scheme is intended to apply to any dispute arising out of or in connection with any matter regulated by URCA under the Comms Act save for the exceptions stated in Section 4.2 above. Every licensee that has been issued either an Individual Operating Licence or a Class Operating Licence Requiring Registration by URCA shall be subject to the procedures established under this ADR Scheme.

7.4 URCA's powers under this ADR Scheme

7.4.1 Upon receiving a Dispute for resolution under this ADR Scheme, URCA will take one or more of the following actions that it considers appropriate:

- (i) hear and determine the Dispute within its powers under the Comms Act, including settling the issues for resolution;
- (ii) facilitate mediation of the Dispute where agreed by the parties;
- (iii) refer the Dispute to an Arbitration Panel for resolution;
- (iv) request information from or submit questions to persons affected by the Dispute;
- (v) direct the parties to commence or continue reasonable, good faith efforts to resolve the Dispute;
- (vi) decline to determine the Dispute based on one or more of the grounds set out in Section 7.9 herein;
- (vii) act as mediator of a Dispute; and
- (viii) take such other course of action as it considers necessary to resolve the Dispute.

7.4.2 Where necessary, URCA may require proof by affidavit or otherwise of any written information, facts or details and any copies or extracts would be required in the process of resolving a Dispute under this ADR Scheme.

7.4.3 URCA may make such inferences and draw such conclusions as it considers necessary from the failure by any party to a Dispute to comply with any direction made by URCA to resolve a Dispute.

7.5 Timescales

7.5.1 There are various established timescales in the procedures set out under this ADR Scheme. URCA views its timely resolution of disputes as a form of performance indicator. However, URCA reserves the right to extend the proposed timescales where it considers it appropriate on a case-by-case basis having regard to any representations

which are made to it by the parties to a Dispute. Where URCA decides to extend the timescales, it shall resolve the Dispute as soon as reasonably practicable after the timeframe has elapsed.

- 7.5.2 Where this ADR Scheme establishes a timescale for doing a required act or taking any action or any step in the ADR process, the affected party shall take such action or step by 4:30 p.m. on that day, unless URCA determines otherwise.
- 7.5.3 Subject to the foregoing, URCA will endeavour to resolve disputes referred to it under this ADR Scheme within a maximum of six (6) months for inter-licensee disputes. The timeframes shall commence from the date URCA is duly notified of a Dispute and has received all information in support of the Dispute. Where URCA requests further information from a party, the time will pause and restart upon URCA receiving the requested information.
- 7.5.4 In order to comply with the targeted timescales for resolving a Dispute, parties to a Dispute are expected to fully co-operate with URCA in achieving resolution of disputes within the established timescales. Where a party to a Dispute fails to provide information or a response within a requested timeframe, URCA will take the appropriate regulatory or other measure to resolve a Dispute on the basis of the information before URCA at the given time.

7.6 Extension of Time

- 7.6.1 Notwithstanding the provisions of section 7.5 above, on the application of a party to a Dispute or by URCA's own motion, and if URCA determines it necessary to a fair resolution and in the best interest of the public, URCA may extend the time limit for the resolution of a Dispute.
- 7.6.2 Where URCA decides to extend the time limit for the resolution of a Dispute, URCA shall set out:
- (i) the reasons for extending any time limit, as well as the new time limit;
 - (ii) the actions to be taken during any extended time limit so as to encourage efficiency;
 - (iii) the steps to be taken where an agreement is not reached between the parties within the extended time limit by means of an alternative mechanism in the ADR process.

7.7 Notice of Dispute

- 7.7.1 In order to be able to act on a Dispute, URCA must firstly be made aware of the Dispute for resolution under this ADR Scheme. Therefore a party requesting dispute resolution

(Applicant) shall complete and submit the relevant Notice of Dispute Form – **URCADR-1** (copy found in Annex A herein).

7.7.2 The Notice of Dispute form has been developed to assist an Applicant in filing a Dispute and to minimize delays in the ADR process consequential to the omission of information needed to resolve the Dispute.

7.8 Binding Effect of Submissions

7.8.1 In order for disputes to be resolved in a timely and effective manner, all submissions by parties to a Dispute shall be binding in nature and raise all relevant issues to be resolved at the initial stage of submission of a Dispute. As such, any party which makes a submission shall, in the initial submission, submit such information and documents as are necessary to support such Dispute.

7.8.2 Except as provided under this ADR Scheme, URCA shall not accept any subsequent submission made a party to a Dispute during the ADR proceedings which:

- (i) raises any new issue not previously disclosed in the initial submission; or
- (ii) contains information which should have been submitted in the initial submission; or
- (iii) takes any position that is inconsistent with the party's initial submission.

7.9 Declining or Dismissal of Dispute

7.9.1 URCA has a statutory mandate under the Comms Act to carry out its functions and exercise its powers in a manner that makes best use of the economic and other resources available to it.⁵ URCA has limited resources and must carefully consider whether a matter referred to it is, in fact, a Dispute and therefore appropriately resolved under this ADR Scheme.

7.9.2 URCA may therefore decline or dismiss any Dispute referred to it where after an assessment of the information, submitted in support thereof, demonstrates that:

- (i) the matter is a complaint not subject to or appropriately resolved under this ADR Scheme;
- (ii) the Dispute is not within the regulatory jurisdiction of URCA;
- (iii) the Applicant has not made reasonable efforts to resolve the Dispute with the Respondent;

⁵ See section 8(2) of the URCA Act, 2009.

- (iv) the Dispute is trivial, vexatious⁶ misconceived or an abuse of process;
- (v) the issue(s) for resolution is the subject of current litigation between the same parties;
- (vi) the Dispute does not raise any issue under the Comms Act, licence condition or obligation of the parties;
- (vii) the Dispute is presented otherwise than in accordance with this ADR Scheme or directions from URCA; or
- (viii) the Dispute is not in the public interest for URCA to determine.

7.9.3 URCA, however, may not reject a Dispute for defects in the information or its presentation without giving an opportunity to the Applicant to rectify the defects within such time as it may give for that particular purpose.

7.9.4 Where URCA rejects an application for Dispute resolution under this ADR Scheme, it shall notify the Applicant in writing, giving reasons for such rejection.

7.10 Withdrawal of Dispute

7.10.1 An Applicant to a Dispute shall be able to withdraw a Dispute submitted to URCA for resolution as of right, but not in a manner that may be prejudicial to the Respondent. The Applicant may, at any time before URCA issues the appropriate regulatory measure to resolve a Dispute, withdraw the Dispute by notice in writing to URCA.

7.10.2 Where a Dispute is withdrawn, URCA may make such orders within its powers under the Comms Act as it deems appropriate. Such orders may include, but are not limited to, costs.

7.11 Determination of Dispute

7.11.1 URCA shall take the appropriate regulatory and other measures in exercise of its powers under the Comms Act to effectively resolve a Dispute which may include, but are not limited to, issuing a determination, order, direction, statement, instruction or notification. In resolving a Dispute, URCA will endeavour to act expeditiously and in doing so shall consider:

- (i) the subject matter of a Dispute;
- (ii) the need to preserve any agreements between the parties over issues that are not in Dispute;
- (iii) the need to inquire into and investigate a Dispute;
- (iv) the representations made by the parties and interested persons to a Dispute;

⁶ URCA believes that a “*frivolous and vexatious*” dispute is a very narrow category where it is readily apparent that the complainant is pursuing a dispute that is without merit and made with the intention of harassing or creating unnecessary burden for the other party.

- (v) URCA's powers and functions within the context of the objectives of the Comms Act; and
- (vi) all matters affecting the merits and fair settlement of a Dispute.

7.11.2 A decision by URCA in resolving a Dispute will be issued in writing and state the reasons for URCA's decision on any issue raised in the Dispute. A decision issued by URCA shall bind the parties to a Dispute.

7.11.3 Any Order issued by URCA under the ADR process for resolving a Dispute, may include, but is not limited to, the following:

- (i) an Order to remedy, prevent or rectify a breach, anticipated breach or conduct which gave rise to the Dispute;
- (ii) an Order to pay compensation;
- (iii) an Order to pay a fine; and
- (iv) an Order to pay costs.

7.11.4 An Order issued by URCA consequential to resolving a Dispute may be enforced in the same manner as an Order of the court⁷.

7.12 Oral Hearing

7.12.1 URCA may determine a Dispute mainly by reference to the information and documents filed by the parties to a Dispute. However, URCA may elect to conduct an oral hearing to aid it in determining a Dispute between licensees either on its own initiative or on application of one or more parties to the Dispute. Where URCA decides to conduct an oral hearing, it will adopt the following general procedures:

- (i) to notify the parties in writing a minimum of ten (10) business days prior to the date of the hearing advising them of the time, location and purpose of the oral hearing;
- (ii) to hold an oral hearing as soon as reasonably practicable but no later than thirty (30) business days after the parties have submitted all the relevant information and documents required or requested by URCA to resolve the Dispute; and
- (iii) to determine the procedure for the oral hearing as it considers appropriate in accordance with the high level principles as described in section 7.1(21) of this ADR Scheme. The rules governing the admissibility of evidence in judicial proceedings will not bind URCA when it is conducting an oral hearing.

7.12.2 URCA will stipulate those matters or issues under dispute as identified by URCA as requiring oral submissions.

⁷ As provided under section 95(3) of the Comms Act.

7.12.3 URCA's stipulation will also include the location, date and times of hearing, time limits for the parties, whether the parties may appear in person or through a representative to attend and make oral submissions to URCA.

7.12.4 URCA may conduct the oral hearing through the use of telephone conference, video-conference or both.

7.13 Reconsideration of URCA's Decision

7.13.1 Reconsideration of a regulatory or other measure issued by URCA to effectively resolve a Dispute may be tantamount to URCA conducting a review of its decision. URCA is not the competent body to conduct such reconsideration.

7.13.2 URCA may issue a regulatory or other measure (e.g. determination, instruction or direction) which may require correction of errors that may, *inter alia*, be prejudicial to a party to a Dispute if not corrected. In such circumstances, URCA may reconsider such regulatory or other measure to the extent of making the necessary corrections and or amendments.

7.13.3 Where there is a clerical, computational or typographical error or any other error of similar nature contained in such regulatory or other measure, URCA may reconsider the regulatory or other measure either:

- (i) on its own motion, within ten (10) calendar days of the date of issuance of the regulatory measure; or
- (ii) on application to URCA by a party to a Dispute within ten (10) calendar days of the date of issuance of the regulatory or other measure. In such circumstances, URCA shall notify the other party to the Dispute of the application for correction of the regulatory or other measure and allow such party a period not exceeding five (5) business days to submit comments to such application or the issue to which the application relates.

7.13.4 Where URCA decides to correct the regulatory or other measure as provided above, URCA shall issue its correction no later than fourteen (14) calendar days of the expiration of the period of time for the receipt of any comments from the other party or within such other period as URCA may decide.

7.13.5 Such correction of the regulatory or other measure will take the form of a corrigendum and shall constitute part of the regulatory or other measure issued by URCA.

7.13.6 Notwithstanding the foregoing, where after URCA has issued a regulatory or other measure in a Dispute, and a party to the Dispute:

- (i) has new evidence which:

- (a) is substantial and material to the Dispute; and
 - (b) did not exist at the time of the issuance of the regulatory or other measure or did exist at that time but was not discovered and could not have been discovered through the exercise of reasonable diligence; or
- (ii) wishes to expand or amend the scope of the Dispute originally submitted to URCA,

URCA may reconsider its regulatory or other measure where necessary and treat with these circumstances under a new Dispute.

7.14 Remedies and Enforcement

- 7.14.1 The remedies issued by URCA consequential to resolving a Dispute between the parties will be regulatory or other measures and therefore must be proportionate to their purpose.
- 7.14.2 An Applicant to a Dispute is required to set out in its Notice of Dispute the remedies which it considers to be appropriate to resolve the Dispute. The parties to a Dispute should have a clear idea on what they intend to achieve by engaging URCA.
- 7.14.3 URCA will not be limited to the remedies proposed by the parties and will consider on a case-by-case basis what remedy is appropriate to resolve the Dispute.
- 7.14.4 Any regulatory or other measure issued by URCA in resolving a Dispute under this ADR Scheme will be enforceable under Part XVII of the Comms Act.

7.15 Appeals

- 7.15.1 Nothing under this ADR Scheme shall preclude a party to a Dispute from appealing a decision issued by URCA to resolve the Dispute to the Utilities Appeal Tribunal (UAT) or any other competent appellate body.

7.16 Costs

- 7.16.1 An Order to pay costs should not act to discourage parties from referring genuine disputes to URCA for resolution.
- 7.16.2 URCA may order, at its discretion, that one or more parties to a Dispute pay costs reasonably incurred by the other party consequential to resolving a Dispute.
- 7.16.3 URCA may also apportion costs of a Dispute between the parties where URCA determines that apportionment is appropriate, considering the circumstances and outcome of the Dispute.

7.16.4 URCA may require a party to a Dispute to pay costs to the other party to the Dispute, provided that URCA firstly considers:

- (i) the party's conduct before and after the referral of the Dispute to URCA, including whether good faith effort has been made to resolve the Dispute; and
- (ii) whether the outcome is in the party's favour (either in whole or in part) in relation to the Dispute.

7.17 Offers of Settlement

7.17.1 A party to a Dispute may at any stage file a written offer of settlement with URCA to resolve a Dispute or any issue arising under a Dispute.

7.17.2 The party filing such offer of settlement with URCA shall on the same date serve a copy of the offer on all parties to the Dispute, unless otherwise directed by URCA.

7.17.3 Unless otherwise directed by URCA, any offer of settlement must contain the terms and conditions of the offer of settlement and a clear and concise explanation of the settlement with supporting documentation as necessary.

1.17.4 Placing timeframes on responses by parties to whom an offer of settlement is made is important to the timely resolution of a Dispute. The party being duly served the offer of settlement shall file comments on the offer of settlement with URCA within five (5) business days of receiving it. Such party filing comments on an offer of settlement shall, on the same date, serve a copy of their comments⁸ on all parties to the Dispute.

1.17.5 Where a party does not file any comments on an offer of settlement, URCA may consider that party to have waived any objections to the offer of settlement and to have accepted such offer.

1.17.6 Within five (5) business days from date of receiving comments on any offer of settlement, where necessary, URCA will allow any party (5) business days within which to file reply comments on an offer of settlement.

7.17.7 In determining a Dispute where an offer of settlement has been made, URCA may approve the offer of settlement on such terms and conditions as URCA considers appropriate and the offer of settlement is in whole or in part, consistent with the policy objectives of the Comms Act.

⁸ Comments should be concise and clearly indicate whether the offer of settlement is accepted in whole or in part and the reasons for non-acceptance of the offer, either in whole or in part.

7.18 Closing a Dispute

7.18.1 It is necessary for URCA to have the appropriate means for identifying those disputes that have been resolved or under appeal before closing a Dispute. As such, URCA shall take account of the following key considerations to determine whether a Dispute can reasonably be considered closed:

- (i) whether the parties to a Dispute have indicated explicitly, or it can be reasonably inferred by URCA, that they no longer wish to pursue the Dispute;
- (ii) whether the parties to a Dispute have agreed a course of action which, if taken, would resolve the Dispute to the satisfaction of the parties and have notified URCA in writing that such course of action has been fulfilled;
- (iii) whether the Applicant to a Dispute has withdrawn the Dispute; or
- (iv) whether a final decision has been made in the Dispute.

7.18.2 URCA shall notify the parties to a Dispute in writing of its decision to close the Dispute and the reasons for its decision.

7.19 Confidential Information

7.19.1 The resolution of disputes entails the submission of information and documents that the submitting party to a Dispute may consider as confidential and request that such information/documents be treated with a high degree of confidentiality.

7.19.2 The following describes the type of information a party to a Dispute may designate as confidential and ask to be treated as such by URCA, which may include, but is not limited to:

- (i) financial, commercial, scientific or technical information the submitting party consistently treats as confidential and information that is not publically available;
- (ii) information that is subject to legal privilege;
- (iii) information that is a trade secret;
- (iv) information the submitting party reasonably expects the disclosure of could:
 - (a) result in direct harm to the party;
 - (b) cause significant financial loss or gain to any person;
 - (c) significantly prejudice the competitive position of any person; or
 - (d) affect contractual or liabilities of any person.

7.20 Treatment of Confidential Information

7.20.1 Save as disclosed during any hearing or in any decision, URCA may treat as confidential all matters, information and documents submitted by the parties to a Dispute during or in connection with the ADR process.

7.20.1 Documents requested to be treated as confidential should be clearly marked (in part or full) “Confidential” and the submitting party should submit to URCA a redacted version along with the confidential version. URCA shall exercise its sole discretion to determine whether to publish (in part or full) any submission marked “Confidential”.

8. Specific Procedures under this ADR Scheme

8.1 This part of the ADR scheme include, *inter alia*, procedures for mediation, arbitration and the issuance of the appropriate regulatory and other measures by URCA to the end of resolving disputes between licensees.

8.1.1 Disputes between licensees usually involve the resolution of more complex issues and licensees must therefore make good faith efforts to resolve issues between them before referring a Dispute to URCA for resolution.

8.2 Referral of Dispute to URCA and Required Information

8.2.1 A dispute between licensees may be referred to URCA for resolution either:

- (i) jointly by mutual agreement of the parties; or
- (ii) *ex parte* by one party or by more than one party jointly to a Dispute.

8.2.2 The party requesting ADR (Applicant) should complete and submit a Notice of Dispute Form (URCADR-1) (copy found in Annex A herein).

8.2.3 The Applicant should provide the following information, at a minimum, in support of a Dispute:

- (i) the names of the parties to the Dispute and contact details for each;
- (ii) nature and scope of the Dispute (as much details as possible should be provided at this stage, including supporting documents/materials – i.e. copies of correspondence between the parties, agreements, contracts, etc.);
- (iii) the details of efforts to resolve the Dispute (evidence should be provided of the attempts to resolve the Dispute before its referral to URCA);
- (iv) preferred dispute resolution mechanism (submitted only for URCA’s consideration);
- (v) the impact of the Dispute (this should cover the impact that the issues in dispute has on the Applicant); and
- (vi) the proposed remedy (the desired outcome by the Applicant should be clearly stated).

8.2.4 All notices for ADR (with accompanying documentation) should be sent to the Director of Policy and Regulation of URCA either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau, Bahamas; or
- by mail, to P. O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242)-393-0237; or
- by email, to info@urcabahamas.bs

8.3 Timeframe for submission of Dispute

8.3.1 A Notice of Dispute under section 8.2 of this ADR Scheme must be submitted to URCA within ninety (90) calendar days after the occurrence of any unresolved matter in contention between the parties and legal proceedings by either party in relation to a Dispute are not in progress.

8.4 URCA's Response to Dispute Referral

8.4.1 URCA will acknowledge receipt of every dispute referral in writing within two (2) business days of receiving the Notice of Dispute.

8.4.2 URCA's acknowledgement of receipt of a Notice of Dispute would advise on the initial course of action to be taken as part of the ADR process, which would indicate that a review of the information in support of the Dispute would be conducted.

8.5 Recording the Dispute

8.5.1 Once a Dispute is received, URCA will assign the dispute a unique reference number.

8.5.2 URCA's acknowledgement of receipt of a Dispute will provide the party the unique case reference number for the Dispute. The parties to the Dispute are encouraged to refer to this unique reference number when making follow-up inquiries about a Dispute filed with URCA for resolution.

8.6 Assessment of Dispute

8.6.1 There may be certain disputes between licensees referred to URCA that may be assessed immediately and the Applicant immediately advised of the most appropriate course of action to be taken. However, depending on the complexity of the issue(s) in dispute, URCA may need to consult internally (and possibly externally) before advising on an appropriate course of action.

8.6.2 URCA will assign the Dispute to a particular member of staff (Case Officer) who will provide a contact for the duration of the ADR process. The Case Officer assigned to the

Dispute will carry out an initial assessment of the nature and scope of the Dispute, the information provided and the efforts made by the parties to resolve the matter.

- 8.6.3 URCA expects to complete its initial assessment within five (5) business days of URCA having received the Notice of Dispute. The Case Officer will keep the parties informed of the progress of the Dispute, particularly where timeframes may be exceeded.
- 8.6.4 Where, in the opinion of the Case Officer, all avenues to resolve the Dispute have not been exhausted, the Dispute may be referred back to the parties or the Case Officer may suggest the parties consider mediation to resolve the Dispute.
- 8.6.5 Where the Case Officer is of the view that further information or clarification is required, the party making a request for ADR will be asked to provide such additional information or clarification. Any response to a request for additional information or clarification will be time bound (usually not exceeding seven (7) business days and will depend on the complexity of the information requested).
- 8.6.6 Consequential to URCA's initial assessment of the dispute and subject to section 8.6.5 above, URCA shall within ten (10) business days of having received the Notice of Dispute and all required information, notify the Applicant in writing (either by e-mail or letter) of the course of action that will be taken in the process, which may include:
- (i) directing the Applicant to commence or continue reasonable efforts to resolve the dispute; or
 - (ii) notifying the Respondent of the Dispute that has been made against it and request initial comments.
- 8.6.7 Where the Applicant fails or refuses to provide such additional information within the specified time, URCA may close the Dispute.
- 8.6.8 Alternatively, where URCA decides that the dispute falls within section 7.9 above, it will notify the parties in writing and provide reasons for such decision.

8.7 Notification of Dispute to Respondent

- 8.7.1 Where URCA decides that the information and documentation in support of a Dispute establishes a bona fide Dispute to be resolved, then, URCA will notify the Respondent in writing of the issues under dispute between the parties. URCA will also provide the Respondent with a copy of the material submitted by the Applicant, except for any material determined by URCA to be "Confidential".

8.8 Response by Respondent to Dispute

- 8.8.1 Where a Dispute is referred to URCA by a consumer and URCA has formally notified the Respondent of the Dispute, URCA will request from the Respondent comments in writing regarding the issues under Dispute. The Respondent shall complete and submit a Response to Dispute Form (URCADR-2) (copy found in Annex A herein).
- 8.8.2 The Respondent will have a timeframe not exceeding fourteen (14) business days from URCA giving notification of a Dispute to such Respondent to submit comments. In exceptional circumstances, the Respondent may be required to respond in a shorter timeframe which may include, but will not be limited to, circumstances where the Applicant is suffering significant harm or disadvantage pending the resolution of the Dispute.
- 8.8.3 URCA expects the comments from the Respondent to include the following information:
- (i) whether the Respondent admits or denies the issues in the Dispute;
 - (ii) a response to each of the issues arising in the Dispute; and
 - (iii) information and copies of any documents the Respondent intends to rely on in defending against the issues raised in the Dispute.
- 8.8.4 Where the Respondent either refuses or fails to respond to a request for comments or for additional information and clarification by URCA within the required timeframe, URCA will take the appropriate regulatory and other measures to resolve the Dispute based on the information in its possession at that time.

8.9 Mediation

- 8.9.1 There may be certain matters referred to URCA for dispute resolution where an informal and flexible approach, such as mediation, may be a more appropriate method to resolving a Dispute between licensees. Mediation, as an alternative means of resolving disputes between licensees has the advantages of being cost and time effective for the parties and preserving long-term relationships upon which the electronic communications sector is based.
- 8.9.2 As such, the facility of mediation for resolving inter-licensee disputes is also provided under this ADR Scheme.
- 8.9.3 Having reviewed all submissions by the parties to a Dispute, URCA may recommend or the parties may consider that the issues under dispute may be effectively resolved through the alternative mechanism of mediation.
- 8.9.4 Where the parties agree to mediation, they should notify URCA in writing and such notification should be submitted to URCA within fourteen (14) business days from the

expiration of the timeframe for response by the Respondent as provided at section 8.8 above.

8.9.5 Where the parties request URCA to initiate the mediation process, it shall do so within five (5) business days subsequent to receiving such written notification for mediation from the parties.

8.9.6 URCA considers that recourse to mediation should be conditional to all parties agreeing to such process. Where a Dispute is referred to URCA for mediation by the parties or agreed by the parties consequential to a recommendation by URCA, URCA will adopt the Mediation Rules, as set out in Annex B contained herein, to govern the mediation process.

8.10 Arbitration

8.10.1 Following a detailed analysis of all submissions by the parties to a Dispute or where a Dispute is referred to URCA for arbitration, URCA will either resolve the Dispute in accordance with the procedure contemplated under Section 8.11 of this ADR Scheme or refer the dispute to a Dispute Resolution Panel (the Panel) for resolution as contemplated under Section 9 herein.

8.11 Regulatory Determination

8.11.1 Where URCA decides to resolve a Dispute between licensees in accordance with the procedure set out under section 99 of the Comms Act, URCA will give notice to the Respondent of the Preliminary Determination:

- (vii) specifying the determination to be made;
- (viii) specifying the issues which are the subject of the Preliminary Determination;
- (ix) specifying the period (not exceeding 30 calendar days) that the Respondent may make representations about the matters in the Preliminary Determination; and
- (x) enclosing a draft Order URCA intends to issue with a Final Determination, if applicable.

8.11.2 Depending on the representations submitted to URCA by the Respondent and any interested party, URCA will within thirty (30) calendar days after receiving such representations issue its Final Determination and Order to the dispute.

8.11.3 URCA will communicate its Final Determination and Order to all parties to the Dispute. The Final Determination and Order will be published on the URCA website, having regard to any requests for commercial confidentiality which URCA considers to be justified. URCA's Final Determination will include, *inter alia*, clear reasons for its decision.

8.11.4 URCA's the Final Determination would not preclude any of the parties to the Dispute from making an appeal in accordance with the Comms Act or any other relevant legislation.

9. Referral of Dispute to Dispute Resolution Panel

9.1 A Dispute between licensees may involve determining issues that are complex and highly specialized. For example, technical matters related to network Access and Interconnection between licensees. Because URCA has limited resources and must carry out its functions and exercise its powers in a manner that makes best use of the economic and other resources available to it, referral of potentially complex disputes between licensees to the Panel for resolution would allow for the timely and effective resolution such disputes by experts in the field.

9.1.1 Following a detailed analysis of all submissions by the parties to a Dispute, URCA may refer a Dispute for resolution by the Panel where, in the opinion of URCA, the nature and scope of the issues raised under the Dispute are likely to be more effectively and efficiently resolved by the Panel.

9.2 Appointment of Dispute Resolution Panel

9.2.1 URCA will appoint a Dispute Resolution Panel that will be responsible for the conduct of ADR proceedings and for the resolution of a Dispute between licensees in accordance with this ADR Scheme.

9.2.2 Where URCA appoints a Dispute Resolution Panel, the Panel will be comprised of either one (1) or three (3) members, who would be independent of all parties to the Dispute.

9.2.3 Where more than one member is appointed, URCA shall to appoint one member of the Panel as its Chairperson.

9.2.4 In appointing or approving the Panel, URCA shall:

- (i) ensure that the qualification, training and experience of each member of the Panel are relevant to the ADR process and the matters in dispute; and
- (ii) provide to the parties upon request, information regarding the qualification of any or all members of the dispute resolution panel.

9.2.5 Before commencement of the ADR proceedings, each member of the Panel shall disclose to URCA any facts or circumstances which are of such nature as to call into question the impartiality or independence of such member.

9.2.6 Where a member of the Panel discloses such circumstances that may give rise to justifiable doubt as to the Panel member's impartiality or independence, or where a

party to the dispute knows of such circumstances, the party may object to and URCA may reject the appointment of such member to the Panel. In such circumstances, URCA may appoint another member to the Panel.

- 9.2.7 Where during the ADR proceedings a member of the Panel is no longer able to act in that capacity, URCA may appoint a replacement member or, where the circumstances permit, determine that the ADR proceedings continue without replacement of such member.

9.3 Dispute Resolution Panel Terms of Reference

- 9.3.1 URCA will establish Terms of Reference for the Panel and serve a copy of such Terms of Reference on each party to a Dispute. The Terms of Reference will include, at a minimum, high level directions for the conduct of the ADR proceedings and all submissions by the respective parties to a Dispute made under this ADR Scheme.

- 9.3.2 While the Panel must be guided by the principles as set out in section 7.1 above, any decision by the Panel should be based on all the relevant facts as disclosed within the course of the ADR procedure, the provisions of the Comms Act or licence issued under the Comms Act, the provisions of any other relevant law of The Bahamas and any relevant agreements existing between the parties to a Dispute.

9.4 General Conduct of Proceedings by the Panel

- 9.4.1 URCA's involvement and intervention into the conduct of the ADR proceedings by the Panel will be limited. As such, the Panel will determine its own procedures for the conduct of proceedings when resolving inter-licensee disputes.
- 9.4.2 Unless otherwise determined by the Panel in its sole discretion, all hearings of ADR proceedings will be public and the Panel should be entitled to invite or accept any submission by any person in relation to the Dispute.
- 9.4.3 The proceedings before the Panel should therefore take place at such place as the Panel considers appropriate having regard to all the circumstances, ensuring however, that there are adequate accommodations for the parties and all their respective representatives.
- 9.4.4 In the course of the ADR process, the Panel may seek evidence from any relevant source, whether connected to the parties or not, including but not limited to scientific, technical or legal opinion from experts.

9.5 Directions and Timetabling by the Panel

- 9.5.1 The date of commencement for the ADR proceedings before the Panel would be the date on which URCA issues Terms of Reference and all submissions by the respective parties to a Dispute made under this ADR Scheme to the Panel.
- 9.5.2 Having received the Terms of Reference and all submissions by the respective parties, the Panel shall take the following steps as soon as reasonably practicable:
- (i) adopt a procedural timetable which it intends to follow and provide copies of such timetable to the parties to the Dispute and to URCA; and
 - (ii) issue directions to the parties to the Dispute for the conduct of the ADR proceedings. Such directions must take into account the high level directives which are included in its Terms of Reference pursuant to section 9.2 above and may include any other matter related to the conduct of the proceedings as the Panel considers appropriate.
- 9.5.3 The timetable and the directions for the conduct of the ADR proceedings by the Panel must seek to ensure that the proceedings are completed as expeditiously as is reasonably practicable, having regard to the overriding need to ensure that the parties are afforded adequate opportunity to make representations in a fair, objective and non-discriminatory manner, observing due process at all times.
- 9.5.4 The Panel will have the sole discretion to modify the timetable and any direction issued under section 9.4 (i) and (ii) above, whether upon application by one or more of the parties or otherwise.
- 9.5.5 The Panel shall duly notify URCA of any such modification to the timetable set for the resolution of a Dispute before the Panel and the reasons for such modification.

9.6 Determination of Issues by the Panel

- 9.6.1 The Panel shall have jurisdiction to determine all matters and issues pertaining to the resolution of a Dispute. The Panel shall also have the power to make any interim or conservatory order as it deems appropriate.
- 9.6.2 The parties to a Dispute shall be bound by the determinations and orders of the Panel consequential to the resolution of a Dispute.
- 9.6.3 A determination or order by the Panel will not preclude any of the parties to a Dispute from making an appeal in accordance with the Comms Act or any other relevant legislation.

9.7 Decision-Making by the Panel

- 9.7.1 The decisions of the Panel, where the panel consists of more than one member, will be made by a majority of the members of the Panel.
- 9.7.2 The Panel will endeavour to issue its decision to a Dispute within three (3) months of the date of issuance of its Terms of Reference by URCA under section 10.2 above⁹ and all submissions by the respective parties.
- 9.7.3 The Panel may issue its determination orally in the first instance, at a hearing called for that purpose, of which no less than three (3) calendar days prior notice would be given to all parties and to URCA.
- 9.7.4 Within fourteen (14) calendar days of the date on which the determination is issued orally, the Panel shall issue its determination in writing to all the parties to a Dispute and to URCA which will contain reasons for the decisions contained therein.
- 9.7.5 The determination by the Panel shall be signed by all members of the Panel. However, where the Panel comprises of more than one member, the signatures of the majority of all members of the Panel will suffice and reasons provided for the absence of any signature would be stated.
- 9.7.6 The determination by the Panel will be binding on the parties and will take effect within fourteen (14) days after the date of issuance of the written determination, or otherwise as expressly stated in the determination, provided that no appeal has been lodged by any party under the Comms Act or otherwise.
- 9.7.7 Where a determination by the Panel involves a monetary award, the Panel may on its own initiative or on the application of any party to the Dispute, order the payment of interest on the award from such time as the Panel considers reasonable under the circumstances.
- 9.7.8 In the event that the Parties arrive at a settlement during the proceedings in accordance with section 8.9 above, the settlement may, upon application to the Panel by the parties and at the sole discretion of the Panel, constitute the determination.
- 9.7.9 Where there are any clerical, computational or typographical error, or any other error of similar nature contained in the written determination issued by the Panel, they may be corrected by the Panel either:
- (i) on its own initiative; or;

⁹ This timeframe excludes the period that URCA will require to receive and fully review all submissions by the parties to a dispute and refer the dispute to the Panel with the supporting documents.

- (ii) on application by any party to the Panel within thirty (30) calendar days of the date of issuance of the written determination. In such circumstances, the Panel shall notify the other party to the Dispute of such application for correction of the determination and allow such party a period not exceeding fourteen (14) calendar days to submit comments in relation to such application or the issue to which the application relates.

9.7.10 Where the Panel decides to correct the determination as provided above, it shall issue its correction no later than fourteen (14) calendar days of the expiration of the period of time for the receipt of any comments from the other party or within such other period as the Panel may decide. Such correction of the determination will take the form of a corrigendum and shall constitute part of the determination issued by the Panel.

9.7.11 The determination issued by the Panel shall be registered at and filed with URCA and may be published by URCA in such manner as URCA thinks appropriate.

9.7.12 Because the parties to a Dispute are to be bound by the decision of the Panel, any party to the ADR proceedings shall have the right to take any action to enforce the determination or any order of the Panel.

9.8 Costs of Proceedings before the Panel

9.8.1 The costs of the proceedings will include costs reasonably incurred in connection with the proceedings.

9.8.2 Without limitation to the foregoing section 9.8.1, costs may include the fees and expenses of the Panel, the fees and expenses of any experts appointed by the Panel, and the reasonable legal and other costs incurred by the parties throughout the proceedings.

9.8.3 The Panel may upon application by a party or on its own motion, at any time during the proceedings, make an order as to costs in relation to particular parts of the proceedings, which shall be binding on the parties.

9.8.4 At the conclusion of the ADR process (either as part of the final determination or otherwise), the Panel shall make a final order as to costs and shall decide which of the parties shall bear the costs and in what proportion such costs shall be borne by the parties. The order shall be binding on the parties.

9.8.5 In deciding what may be reasonable costs to award, the Panel will take into account all the circumstances regarding the matter including, but not limited to, the following:

- (i) the care, speed and accuracy with which the matter was prepared by the parties to the Dispute;

- (ii) the conduct of the parties before, as well as during, the proceedings; and
- (iii) the manner in which the parties pursued –
 - (a) a particular allegation;
 - (b) a particular issue; and
 - (c) the Dispute as a whole.

9.9 Confidentiality of Information before the Panel

- 9.9.1 Save as disclosed during any oral hearing before that Panel or in any determination by the Panel, or as otherwise expressly determined by the Panel, all matters, documents or other information disclosed during or in connection with the ADR proceedings shall be held confidential by all parties.

Annex A –DISPUTE RESOLUTION PROCEDURES FORMS

URCADR-1

**UTILITIES REGULATION & COMPETITION AUTHORITY
Notice of Dispute Form (Inter-Licensee)**

1. Details of Applicant

Name of Applicant:	
Address (including Postal Address):	
Contact Person for this Application:	
Name:	Position:
Telephone:	
Facsimile:	
E-mail:	
Date dispute was submitted to Respondent:	

2. Details of Respondent

Name:	
Address (including Postal Address):	
Contact Person for Dispute:	
Position:	
Telephone:	
E-mail:	
Facsimile:	

3. Dispute Determination Request of the following issue(s):

I/We the above-named Applicant, having first made good faith and reasonable efforts to resolve the following dispute with the above-named Respondent and having failed to do so, now request the Utilities Regulation & Competition Authority to determine the matter. [Please continue on a separate page if necessary].

4. Details of Dispute

Please supply the specific details of your dispute [i.e. what it relates to; when it occurred; what steps you have taken to attempt to resolve the matter with the opposite side]. You should attach a copy of all relevant documentation to this application [e.g. letters, contracts, etc.]. (Continue this information on a separate page if necessary).

5. Interested Parties

Are there any other persons or organizations who or which may be directly affected by, or who has a sufficiently close interest in the outcome of this Dispute? If so please insert their contact details. [Continue this information on a separate page if necessary].

Name:	
Address (including Postal Address):	
Telephone:	
Facsimile:	
E-mail:	
Reason this person may be affected or have sufficient interest in the outcome:	

6. Impact of Dispute

Please detail what impact this dispute is or is likely to have if unresolved. (Continue this information on a separate page if necessary).

7. Remedy Requested

Please specify what action you require to resolve this dispute. (Continue this information on a separate page if necessary).

8. Signature on Behalf of Applicant

By signing this application on behalf of the Applicant, you undertake that you are duly authorized to commence these proceedings and to sign on behalf of the Applicant.

Signed:	Print Name:
Position:	Date:

<p style="text-align: center;">IMPORTANT INSTRUCTIONS FOR FILING A DISPUTE DETERMINATION REQUEST</p> <p>To file this application you must: (a) complete and sign the Notice of Dispute Resolution Form; (b) attach a copy of any relevant correspondence, information, documents and exhibits and send all of the foregoing to the addressee below:</p> <p>The Chief Executive Officer, The Utilities Regulation & Competition Authority, UBS Annex</p>
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Building, East Bay Street, P. O. Box N-4860, Nassau, Bahamas

Telephone: 242 393-0234
E-mail: info@urcabahamas.bs

Fax: 242 393-0153
E-mail: info@urcabahamas.bs

URCADR-2

**UTILITIES REGULATION & COMPETITION AUTHORITY
Response to Dispute Form**

1. Parties

Name of Applicant:
Name of Respondent:

2. Acknowledgement of receipt of Notice of Dispute

I/We, the above-named Respondent, acknowledge that I/We have received a Notice of Dispute dated the _____ day of _____, _____ and accompanying documents.

3. Response to Notice of Dispute

As the Respondent in this Dispute, I/We say that: [Please tick the appropriate box(es)]:

I/We *admit/deny [*strike out whichever does not apply] the Dispute as stated in the Notice of Dispute as submitted to me/us;

I/We *accept/do not accept [*strike out whichever does not apply] the outcome sought by the Applicant, and see my/our reasons specified below;

(c)I/We respond to each of the allegations stated in the Dispute as set out below.

4. Response to Details of the Dispute

In response to the Application, I/We say that: (please continue on a separate page if necessary). Please set out in detail your response to the allegations contained in the Notice of Dispute, including the proposed remedy requested by the Applicant.

5. Signature of Respondent

The Respondent's representative may sign on behalf of the Respondent, and in so doing undertakes that he or she has the authority to do so.

Signed:	Print Name:
Position:	Date:

IMPORTANT INSTRUCTIONS FOR SUBMITTING REPLY TO DISPUTE

The Respondent must complete and sign this form and send it with a copy of all documentation relevant to your response(s) to the allegations to the Utilities Regulation & Competition Authority (URCA) within 14 business days of the date of receiving the Notice of Dispute. Otherwise URCA will proceed with Determining this Dispute.

Annex B – Mediation Rules

1. Introduction

- 1.1 The Utilities Regulation and Competition Authority (URCA) issues these Mediation Rules (the Rules) pursuant to section 15(1) of the Communications Act, 2009. Under this provision, URCA has a duty to establish one or more alternative dispute resolution (ADR) schemes (including mediation) for disputes between consumers and licensees and disputes between licensees.
- 1.2 Where such disputes are lodged for resolution by mediation, the mediation shall take place in accordance with these Rules. The Rules include the Schedule of Mediation Fees (the Schedule) in effect at the commencement of the mediation.

2. Scope of the Rules

- 2.1 Upon agreement by the parties in writing to settle a Dispute by way of mediation, the Rules shall apply.

3. Commencement of Mediation

- 3.1 A party to a Dispute wishing to commence mediation proceedings pursuant to the Rules shall submit a Request for Mediation in writing to URCA.
- 3.2 Where the Request for Mediation is not made jointly by all parties to the Dispute, the party requesting the mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties.
- 3.3 The Request for Mediation shall contain or be accompanied by:
 - (i) the names, addresses and telephone, fax, e-mail or other communication references of the parties to the Dispute and of the representative of the party filing the Request for Mediation;
 - (ii) a copy of the agreement to mediate; and
 - (iii) a brief statement of the nature of the Dispute.

- 3.3 The date of the commencement of the mediation shall be determined by the Mediator appointed under the Rules or as agreed by the parties to the mediation process.

4. Appointment of Mediator

- 4.1 Unless the parties have agreed on the appointment of a Mediator, the Mediator shall be appointed by URCA after consultation with the parties.
- 4.2 Any Mediator agreed by the parties or appointed by URCA shall be neutral, independent and impartial. Additionally, the Mediator must have the following minimum qualifications:
- a) previous mediator training by an accredited mediation or arbitration body;
 - b) certifications or membership on a mediator roster of an accredited mediation or arbitration body;
 - c) relevant experience as a mediator; and
 - d) a minimum of five (5) years' experience in a regulatory or utility environment.
- 4.3 Before accepting appointment, the Mediator shall disclose to the parties and to URCA any circumstances that might give rise to justifiable doubt as to the Mediator's impartiality or independence, or confirm in writing that no such circumstances exist.
- 4.4 Where, at any stage during the mediation, new circumstances arise that might give rise to justifiable doubt as to the Mediator's impartiality or independence, the Mediator shall promptly disclose such circumstances to the parties and URCA.
- 4.5 Where the Mediator discloses such circumstances that may give rise to justifiable doubt as to the Mediator's impartiality or independence, or where a party independently knows of such circumstances, the party or parties may object to and URCA may reject the appointment of the Mediator. In such circumstances, URCA shall appoint another Mediator.

5. Role of Mediator

- 5.1 The Mediator shall act in an independent and impartial manner to assist the parties in reaching an amicable settlement of the Dispute, but shall have no authority to impose a settlement on the parties.
- 5.2 The Mediator shall be guided by the principles of objectivity, fairness and transparency, giving equal consideration to the rights and obligations of the parties and the

circumstances surrounding the Dispute, including any previous business practices between the parties.

5.3 Where the Mediator has reason to believe that any issue in dispute between the parties is 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, least costly and most productive settlement of those issues. In particular, the Mediator may so propose:

- (i) an expert determination of one or more particular issues; or
- (ii) arbitration.

6. Representation of Parties and Participation in Meetings

6.1 Any party to the mediation may represent itself in the mediation or may be represented or assisted by another person in meetings with the Mediator.

6.2 A party to the mediation process must have a representative present at all times during the mediation with the authority or delegated authority to discuss and negotiate a settlement.

6.3 The parties may seek counsel at any time during the mediation if they so choose.

6.4 Within five (5) business days of the appointment of the Mediator, the names and addresses of persons authorised 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 in writing by that party to the other party, the Mediator and to URCA.

7. Conduct of the Mediation

7.1 The mediation shall be conducted in the manner agreed by the parties. If, and to the extent that the parties have not made such an agreement, the Mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted; having in mind at all times the circumstances of the case and the wishes of the parties.

7.2 As soon as reasonably possible after being appointed, the Mediator shall, in consultation with the parties, establish a timeline for the submission by each party to the Mediator

and to the other party of a report summarizing 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.

- 7.3 The Mediator, after consultation with the parties, shall fix the time of each mediation session.
- 7.4 The mediation shall be held at the office of the Mediator or at any other convenient location agreeable to the Mediator and the parties as the Mediator shall determine.
- 7.5 The Mediator may meet with and communicate separately with each party or the party's representative.
- 7.6 The Mediator shall notify all other parties of any such separate meetings or other communications.
- 7.7 The Mediator shall not disclose any information given at such meetings to the other party without the written authorization of the party giving the information.
- 7.8 The parties and their representatives shall agree to co-operate in good faith with the Mediator in ensuring that the mediation is conducted expeditiously, to submit written materials and provide evidence as requested by the Mediator, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through their authorised representatives.
- 7.9 The Mediator may at any time during the mediation suggest that a party provide such additional information or materials as the Mediator deems necessary to the mediation process.

8. Confidentiality

- 8.1 Mediation is intended to be private and confidential. Persons not authorised as representatives of the parties may only attend mediation sessions with the permission of the parties and with the consent of the Mediator.
- 8.2 The parties and the Mediator agree not to disclose or transmit to any outside party, introduce or otherwise use any documents, information, opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the Mediator as evidence in any action at law or other judicial or arbitration proceeding unless authorised in writing by the parties to the mediation or compelled by law.

- 8.3 Save and except as agreed between the parties and the Mediator, no formal recording of any kind or transcript shall be made of any meetings of the parties with the Mediator.
- 8.4 Subject to Clauses 8.2 and 8.3 above, the parties to the mediation may take written notes of matters discussed and agreed during the mediation with the Mediator.
- 8.5 Each person involved in the mediation process, including the Mediator, the parties and their representatives, and any other person present during the meetings of the parties with the Mediator, shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

9. Settlement Agreement

- 9.1 Each party may, on its own initiative or at the invitation of the Mediator, submit to the Mediator suggestions for the settlement of the Dispute.
- 9.2 Where it appears to the Mediator that there exist elements of a settlement which would be acceptable to the parties, the Mediator may formulate the terms of a possible settlement and submit them to the parties for their comments. The Mediator may reformulate the terms of a possible settlement after giving consideration to the views of the parties.
- 9.3 If terms are agreed in settlement of the Dispute, the parties shall draw up and sign a settlement agreement, setting out such terms.
- 9.4 A copy of the settlement agreement executed between the parties shall be submitted to the Mediator and URCA within ten (10) business days after such settlement has been so executed.

10. Termination of the Mediation

- 10.1 The mediation process shall be terminated:
- (i) by the execution of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
 - (ii) by a decision of the Mediator if, in the Mediator's sole opinion, 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 after attending the first meeting of the parties with the Mediator and before the signing of any settlement agreement.

- 10.2 Where a party determines to terminate the mediation process it shall give the other party and the Mediator ten (10) business days prior written notice of such determination.
- 10.3 Upon termination of the mediation, the Mediator shall promptly send to URCA a notice in writing that the mediation is terminated and shall include 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 to the parties a copy of the notice addressed to URCA.
- 10.4 URCA shall keep the said notice of the Mediator confidential and shall not, without the written authorisation of the parties, disclose either the existence or the result of the mediation to any person.
- 10.5 URCA 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.
- 10.6 Unless required by a competent court or authorised 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.

11. Mediation Fee

- 11.1 The Request for Mediation shall be subject to the payment to URCA of an administration fee by each party to the mediation, the amount of which shall be fixed in accordance with the fees as described in the Schedule contained herein. Such fees become payable on the date of the submission of the Request for Mediation and shall not be refundable.
- 11.2 No action shall be taken by URCA on a Request for Mediation until the administration fee has been paid.
- 11.3 If a party to the Request for Mediation fails within fifteen (15) business days after a second reminder in writing from URCA to pay the administration fee it shall be deemed to have withdrawn its Request for Mediation.

12. Exclusion of Liability

12.1 URCA shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.

13. Waiver of Defamation

13.1 The parties and 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 found or maintain any action for defamation, libel, slander or any related complaint.

Schedule of Mediation Fees

Mediation Fee	
(per Party)	Assessed in equal parts