

## ETHICS CODES FOR FDRC MEDIATORS AND ARBITRATORS

### Ethics Code for FDRC Mediators

#### General Responsibilities

1. The Mediator shall act fairly in dealing with the Parties to the Mediation, have no personal interest in the terms of any *Mediated Settlement Agreement*, show no bias towards the Parties, be reasonably available as requested by the Parties, and be certain that the Parties have been informed about the mediation process.

#### Responsibilities to the Parties

##### 2. Impartiality/Conflict of Interest

The Mediator shall be impartial. The Mediator shall disclose to the Parties any affiliations/interests which the Mediator may have or had with any Party or in relation to the Mediation and in such situation obtain the prior written consent of all the Parties before proceeding with the Mediation.

##### 3. Informed Consent

- (a) The Mediator shall explain to all Parties the nature of the mediation process, the procedures to be utilised and the role of the Mediator.
- (b) The Mediator shall ensure the Parties sign an *Agreement to Mediate* set out in Annex VI of the Terms of Reference prior to the substantive negotiations between the Parties.

##### 4. Confidentiality

- (a) The Mediator shall keep confidential all information, arising out of or in connection with the Mediation, unless and to the extent compelled by law or public policy grounds.
- (b) Any information disclosed in confidence to the Mediator by one of the Parties shall not be disclosed to the other Party without prior permission.
- (c) Paragraphs 4(a) and 4(b) shall not apply if there are reasonable grounds to believe

that the disclosure is necessary to prevent or minimize the danger of injury to a person or of serious harm to the well-being of a child.

- (d) The Mediator shall inform the Parties of the degree to which communications connected with the mediation process shall be confidential, including any special confidentiality which attaches to private meeting.
- (e) The Mediator shall ensure all legal advisors, experts and attendees who are not Parties to the Eligible Dispute sign a separate *Confidentiality Agreement* in the form prescribed by the FDRC in Annex VII of the Terms of Reference.

## 5. **Termination of Mediation**

- (a) The Mediator shall inform the Eligible Claimants of their right to withdraw from the Mediation.
- (b) If the Mediator's opinion is that the continuing of the Mediation is no longer practicable, the Mediator can terminate the Mediation.
- (c) If the Mediator believes that a Party is unable or unwilling to participate effectively in the mediation process, the Mediator can terminate the Mediation.
- (d) If the Mediator believes that continuing the Mediation will raise ethical concerns, the Mediator can terminate the Mediation.
- (e) If the Mediator believes that there is insufficient information for the Mediation to proceed constructively, the Mediator can terminate the Mediation.

## 6. **Insurance**

The Mediator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he is adequately covered.

## **Defining the Process**

### 7. **Independent Advice and Information**

The Mediator shall consider whether to encourage the Party to obtain legal advice or relevant expert opinion where appropriate.

8. **Conflicts of Interest**

A Mediator shall disclose all actual and potential conflicts of interest reasonably known to the Mediator as soon as possible. After disclosure, the Mediator shall decline to mediate unless all Parties choose to retain the Mediator.

9. **Fees**

The Mediator shall charge according to the *Schedule of Fees* set out in Annex I of the Terms of Reference of the FDRC in relation to the FDRS.

10. **Additional Representation or Roles**

A Mediator shall not engage in any additional representative or non-mediation role in relation to the subject matter of a mediated dispute.

**Responsibilities to the Mediation Process and the Public**

11. **Competence**

The Mediator shall be competent and knowledgeable in the process of mediation. Relevant factors shall include training, specialist training and continuous education, having regard to the relevant standards and/or accreditation scheme to which the Mediator is accredited.

12. **Appointment**

Before accepting an appointment, the Mediator must be satisfied that he has time available to ensure that the mediation can proceed in an expeditious manner.

13. **Advertising/promotion of the Mediator's services**

A Mediator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. Subject to the above, a Mediator may not use the name and/or the logo of the FDRC or the fact that he is on the List of Mediators maintained by the FDRC to promote his private practice.

## **Ethics Code for FDRC Arbitrators**

The Oxford English Dictionary defines 'ethics' as "moral principles or rules of conduct". A Code of Ethics provides a set of moral principles according to which one can conduct one's affairs.

The purpose of adopting a code of ethics for Arbitrators is not only to serve as a guide to the conduct of Arbitrators, but also to serve as a point of reference for users of the Arbitration and to promote public confidence in Arbitration as a suitable forum for resolving disputes. The Code itself is not a rigid set of rules but is a reflection of internationally acceptable norms.

In some instances the ethics set down herein may be repeated in legislation governing the arbitration, case law or rules which Parties adopt. In many instances, Arbitrators will also be bound by other codes of practice or conduct imposed upon them by virtue of membership of primary professional organisations.

### **Rule One**

An Arbitrator has an overriding obligation to act fairly and impartially as between the Parties, at all stages of the proceedings.

### **Rule Two**

An Arbitrator shall be free from bias and shall disclose any interest in the Arbitration or relationship with any party likely to affect his impartiality or which might reasonably create an appearance of partiality or bias. An Arbitrator in such situation shall obtain the prior written consent of all Parties before proceeding with the Arbitration. This is an ongoing duty and does not cease until the Arbitration has concluded. Failure to make such disclosure itself may create an appearance of bias, and may be a ground for disqualification.

An Arbitrator shall not permit outside pressure, fear of criticism or any form of self-interest to affect his decisions. An Arbitrator shall decide all the issues submitted for determination after careful deliberation and the exercise of his own impartial judgment.

An Arbitrator in communicating with the Parties shall avoid impropriety or the appearance of impropriety. There shall be no private communications between an Arbitrator and any party, regarding substantive issues in the case. All communications, other than proceedings at a hearing, should be in writing. Any correspondence shall remain private and confidential and shall not be copied to anyone other than the Parties to the dispute, without the agreement of the Parties.

An Arbitrator shall not accept any gift or substantial hospitality, directly or indirectly, from any Party to the Arbitration, except in the presence of the other Parties and/or with their consent.

### **Rule Three**

An Arbitrator shall only accept an appointment if he has suitable experience and ability for the case and available time to proceed with the Arbitration.

### **Rule Four**

An Arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.

### **Rule Five**

An Arbitrator shall charge according to the *Schedule of Fees* of the FDRC in Annex I of the Terms of Reference of the FDRC.

### **Rule Six**

An Arbitrator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. Subject to the above, an Arbitrator may not use the name and/or the logo of the FDRC or the fact that he is on the List of Arbitrators maintained by the FDRC to promote his private practice.

### **Rule Seven**

An Arbitrator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he is adequately covered.

*[NOTE: The Code has been formulated by the Chartered Institute of Arbitrators (“CI Arb”) as a guide to independent dispute resolvers as to their conduct and that the CI Arb has consented to the Financial Dispute Resolution Centre (“FDRC”) adopting the Code for its own scheme. The Chartered Institute of Arbitrators gives no warranty representation or assurance that the Code is suitable for use or adoption by the FDRC for its scheme.]*