



**MAHRATTA CHAMBER OF COMMERCE INDUSTRIES &
AGRICULTURE**

Mediation and Conciliation Centre Rules, 2021

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MCCIA MEDIATION AND CONCILIATION CENTRE RULES, 2021

1. These Rules shall be called “MCCIA Mediation and Conciliation Centre Rules, 2021” and shall hereinafter be referred as “**Rules**”. The Rules shall govern the proceedings of Mediation and/or conciliation undertaken by the MCCIA Mediation Centre (“**Centre**”) and shall be read with any applicable law. If any of these Rules are in conflict with any mandatory provision of the applicable law of Mediation/ Conciliation from which the parties cannot derogate, that provision shall prevail.

2. DEFINITIONS

- (a) “Conciliation” means a voluntary and confidential dispute or conflict resolution process, by one or more Conciliators, who assist parties at dispute in negotiating and arriving at a mutually agreed settlement. For the purposes of these Rules, Conciliation shall also be referred to as Mediation.
- (b) “Mediation” means a structured, voluntary and confidential dispute or conflict resolution process in which trained Mediators facilitate and negotiate between the parties in dispute or conflict and assist them in arriving at a mutually acceptable settlement.
- (c) “Mediator” means an independent and uninterested person, trained, and accredited in Mediation.
- (d) "Officer - in - Charge" means the Centre's official assigned under these Rules who shall perform all the functions to be done by Centre as required under these Rules.

3. APPLICABILITY

- (a) Where any agreement, submission or reference provides for Mediation or Conciliation by Centre or under these Rules the parties shall be taken to have agreed that the Mediation or conciliation shall be conducted in accordance with the following Rules, or such amended Rules as may have adopted to take effect before the commencement of Mediation. The Rules are subject to such modifications as the parties may agree in writing at any time.
- (b) The following matters or cases will be termed as unfit for Mediation:
 - (i) Disputes involving serious allegations of any heinous crimes such as fraud, misappropriation, criminal breach of trust, cheating, forgery or any offences punishable under any law;
 - (ii) Disputes involving public interest or interest of numerous persons who are not parties to such Mediation proceedings;
 - (iii) Disputes that involve constitutional remedies;

- (iv) Disputes that cannot be resolved by Mediation by virtue of specific prohibition under any law;
- (v) Disputes, which in the opinion of the Centre or the Mediator, require technical or judicial intervention and is unfit for Mediation.

4. INITIATION OF MEDIATION WHERE THE AGREEMENT BETWEEN THE PARTIES TO DISPUTE PROVIDES FOR MEDIATION BY CENTRE

- (a) Where there is an agreement between the parties to refer their dispute to the Rules, any party or parties wishing to commence Mediation pursuant to the Rules shall file a written Request for Mediation (“**Request**”) with the Centre. Such Request for Mediation shall contain a brief self- explanatory statement of the nature of the dispute, the quantum of dispute, if any, and the relief or remedy sought. The Request shall be filed in a form as may be prescribed by the Centre.
- (b) The copy of the Request shall be sent to all other parties unless the request has been filed jointly by all parties.
- (c) Within 7 days from the receipt of Request by all the parties, the parties shall meet for the purposes of selection of a Mediator in accordance with these Rules and for determination of the Mediation fees. This meeting shall be chaired by the Officer – in – Charge. The appointment of Mediator shall be finalized within 14 days from the meeting referred to under this clause.
- (d) The date of commencement of the Mediation shall be deemed the date on which the parties appoint the Mediator (or Mediators), provided that proceedings shall not commence until the Mediation fees have been paid by the parties to the Centre.

5. INITIATION OF MEDIATION WHERE THE AGREEMENT BETWEEN THE PARTIES TO DISPUTE DOESN'T PROVIDE FOR MEDIATION OR BY THE CENTRE (MEDIATION BY SUBMISSION)

- (a) If a dispute arises, a party may request the initiation of Mediation (“**Initiating Party**”) by delivering a written request for Mediation to the other party (“**Opposite Party**”) and the Centre in the format as may be prescribed. Such request for Mediation shall contain a brief self - explanatory statement of the nature of the dispute, the quantum of dispute, if any, and the relief or remedy sought (“**Request**”).
- (b) Upon receipt of such Request, the Centre will also inform all other parties of the request made and may assist the parties in considering the request for Mediation. If required by the parties, the Centre may undertake an orientation session with all the parties to the dispute.
- (c) The Opposite Party who receives a request for Mediation shall notify the Initiating Party and Centre within 15 days after receipt of the request whether it is willing for Mediation.
- (d) Failure by any party to reply within 15 days shall be treated as a refusal to mediate.

- (e) Where the parties reach an agreement to refer their dispute to the Rules, an 'Agreement to Mediate' will be entered into the parties, which shall be facilitated by the Centre.
- (f) Within 7 days from execution of Agreement to Mediate between the parties, the parties shall meet for the purposes of selection of a Mediator in accordance with these Rules and for determination of the Mediation fees. This meeting shall be chaired by the Officer – in – Charge. The appointment of Mediator shall be finalized within 14 days from the meeting referred to under this clause.
- (e) The date of commencement of the Mediation shall be deemed the date on which the parties appoint the Mediator (or Mediators), provided that proceedings shall not commence until the Mediation fees have been paid by the parties to the Centre.

6. COURT REFERENCED MEDIATION

- (a) Any mediation referred to the Centre by any court or tribunal of India shall be governed by these Rules. The court annexed mediation shall be conducted as per these Rules unless contrary to any directions or order of the referring court, tribunal or other judicial decisions governing court annexed mediations in India.
- (b) The appointment of Mediator and Mediation fees of the court annexed mediation shall be as per the directions and orders of the referring court or tribunal.
- (c) In order to preserve the confidence of parties in the Court and the neutrality of the Mediator, there should be no communication between the Mediator and the Court, except as stated under clauses of these Rules.
- (d) If any communication between the Mediator and the court is necessary, it shall be in writing and copies of the same shall be given to the parties.
- (e) Communication between the Mediator and the Court shall be limited to communication by the Mediator:
 - (i) with the Court about the failure of the party to attend;
 - (ii) with the Court about the consent of the parties;
 - (iii) regarding his assessment that the case is not suited for settlement through the mediation/conciliation;
 - (iv) that the parties have settled the dispute (s).
- (f) In case of court referred mediation, on the expiry of 90 days from the date of first meeting of the parties with the Mediator, the mediation shall stand terminated. No extension of time shall be granted unless the Court, which referred the matter, either suo moto, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful. In all cases, extension of time shall be at the discretion of the court of law referring the dispute to mediation.

- (g) Where an agreement is reached between the parties regarding all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties. If any counsel has represented the parties, the Mediator may obtain his signature also on the settlement agreement. The agreement of the parties so signed shall be submitted to the Mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending. Where no agreement is arrived at between the parties, before the time limit stated or where the Mediator is of the view that no settlement is possible, he shall report the same to the Court in writing.

7. APPOINTMENT OF MEDIATOR

- (a) The parties may jointly nominate a Mediator from the Panel of Mediators constituted by the Centre and this process shall be facilitated by the Centre. The Centre may recommend co-Mediators where deemed appropriate.
- (b) If the parties are unable to jointly nominate a Mediator by mutual consent, the Centre will provide the parties with a list of no fewer than three person who would, in the Centre's view, be qualified to mediate the dispute along with profile of each such person. In compiling the list, the Centre will take into account the nationalities of the parties, the language in which the Mediation will be conducted, the place of the Mediation and any substantive expertise, particularly domain knowledge which may be required or helpful.
- (c) Each party may strike up to two names and will number the remaining name(s) in the order of preference. Each party shall return the marked list to the Centre within 3 days from the date on which the list is received by them. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.
- (d) If the lists which have been returned do not show a person who is acceptable as Mediator to both parties, the Centre shall be authorized to appoint the Mediator. If the parties object to such a Mediator which has been appointed by the Centre, the Centre shall take note of the objections and endeavour to appoint a different Mediator. However, if the appointment of such a Mediator by the Centre is further objected by the parties and the parties do not provide their consent over such an appointment by the Centre, it shall be deemed that the Mediation proceedings have been terminated.
- (e) Before formal appointment or confirmation, a prospective Mediator shall sign a statement of acceptance, availability, impartiality and independence. The prospective Mediator shall disclose in writing to the Centre any facts or circumstances which might be of such a nature as to call into question the Mediator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the Mediator's impartiality. The Centre shall provide such information to the parties in writing and shall fix a time limit for any comments from them. If any party takes objection to the proposed Mediator within 2 days, they shall not be appointed. The substituted Mediator shall be appointed in the same manner as the Mediator, who is replaced.
- (f) Panel of Mediators:

- (i) The Centre in order to carry out their function of resolving disputes in an amicable manner will empanel experienced and revered Mediators to resolve conflicts.
- (ii) The Centre would also work towards the establishment of administrative support for the Mediators empanelled by it.
- (iii) The Mediator shall follow the ethics as provided under the Mediator Code of Conduct and in accordance with the Rules.
- (iv) In case any party has a complaint with the Mediator or is not satisfied with the working of the Mediator, the complaint shall be made to the Officer-in-Charge who shall examine the same and take appropriate steps.
- (v) Centre shall periodically review the working of the Mediators empanelled by it.

8. PROCEDURE

- (a) The Mediator may conduct the Mediation in such manner, as (s)he considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute or for an effective deal making or may follow, with or without modifications, the procedure laid under Annexure – A.
- (b) While conducting and facilitating Mediation under these Rules, the Mediator shall be bound by the Code of Conduct as prescribed under Annexure – B.
- (c) The Mediator is not bound by any procedural law, such as the Code of Civil Procedure, 1908 or the Evidence Act, 1872, etc., but shall be guided by principles of fairness and justice, having due regard to the rights and obligations of the parties, confidentiality, usages of trade and custom, if any. Mediator shall exercise all such authority as may be required for the proper conducting of the Mediation process.
- (d) The Mediator may with the consent of parties, obtain the service of experts, who can assist the Mediator or the parties in helping to resolve the dispute or understanding the subject matter of the dispute or deal. The expert shall enter into a confidentiality agreement while participating in the Mediation process. The parties shall bear the expenses incurred for obtaining such service.
- (e) Each party shall act in good faith throughout the Mediation.
- (f) When the Mediator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate: Provided that when a party gives any information to the Mediator subject to a specific condition that it be kept confidential, the Mediator shall not disclose that information to the other party.
- (g) Termination of the Mediation Proceedings

- (i) Mediation Proceedings shall come to an end:
 - i. Either of the parties withdraw from the Mediation by a written notice which must be submitted to the Officer-in-Charge, the Mediator and all the parties to the dispute;
 - ii. The Mediator feels the Mediation needs to be terminated (the reasons for which need to be submitted in writing to the Officer-in-Charge);
 - iii. The time limit set by the Centre has expired (including any extension);
 - iv. On execution of the Settlement Agreement.
 - (ii) Where the notice/invitation issued to the opposite party remain unacknowledged or where the opposite party refuses to participate in the Mediation process or fails to appear in a stipulated time, the Centre shall treat the Mediation process to terminated and make a report endorsing the same to the Inviting Party, the opposite party, as well as the Mediator.
 - (iii) On the final Mediation session, the Mediator shall submit the “Mediator’s Completion Report” to the Officer-in-Charge.
 - (iv) After receipt of the above, the Officer-in-Charge shall prepare a “Mediation Status Report” to be submitted to the Parties regardless of whether a settlement was reached or not.
 - (v) The Officer-in-Charge shall invite the Parties and their Legal Counsels to complete the Feedback Form and the Mediator Evaluation Form and submit the same to the Centre.
- (h) The time frame for mediation shall be three months from the date of execution of the Agreement to Mediate, extendable only at the instance of all the parties to the dispute.

9. SETTLEMENT AGREEMENT

- (a) Any settlement reached in the Mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of the parties. For the avoidance of doubt, a Settlement Agreement may take the form of an electronic record and be signed by electronic signature.
- (b) Where any Settlement Agreement has been reached, the Mediator shall promptly notify the Centre of the same and provide the Centre with a copy of such an agreement. The copy of Settlement Agreement shall be retained by the Centre for a term of three years from the date of execution of Settlement Agreement for the purpose of record.

- (c) If requested, the Mediator may draw up or assist the parties in drawing up the Settlement Agreement. The Mediator shall authenticate the Settlement Agreement (and each original thereof) and furnish an authenticated original to each of the parties.
- (d) The parties agree that a settlement reached out of Mediation process is a settlement reached after Conciliation, the Mediator shall authenticate the settlement in the capacity of a Conciliator under Section 73 (4) of the Arbitration and Conciliation Act, 1996. The status of such a settlement shall be deemed to be a Settlement Arbitral Award under Section 30 of the Arbitration and Conciliation Act 1996 which is final and binding on all the parties. The said settlement agreement can be enforced as a decree under Section 36 of the Arbitration and Conciliation Act 1996, subject to payment of stamp duty, if any, as per the local law where the award is to be enforced.
- (e) The Centre shall along with the report of the Mediator submit its own report as may be required to the referring forum. The Centre shall also forward a copy of the Settlement Agreement of the parties duly authenticated by the Mediator, or in place and instead thereof, the joint letter of the parties that they have settled the dispute and do not seek to enter into a written agreement for the said purpose or disclose the same when enter into.

10. FEES AND COSTS

- (a) The party or parties filing a Request with the Centre shall pay a non-refundable Filing Fee, as set out in the Fee Schedule. No Request shall be processed unless accompanied by the filing fee.
- (b) The amount and currency of the fees of the Mediator and the modalities and timing of their payment shall be fixed by the Centre, after consultation with the Mediator and the parties.
- (c) Following commencement of the Mediation, the Centre shall request all parties to make any one or more deposits to cover the Centre's administrative fees, the Mediator's fees, and other such expenses of the Centre and the Mediator.
- (d) The parties shall be jointly and severally liable to the Centre and the Mediator for such Costs.
- (e) The Centre may stay or terminate the Mediation if any request deposit is not paid.
- (f) Upon termination of the Mediation, the Centre shall fix the total costs of the Mediation and reimburse the parties for any excess payment or bill the parties for any balance required pursuant to the Rules.
- (g) All deposits requested, and cost fixed by the Centre shall be borne equally by the parties, except where they have agreed otherwise in writing.
- (h) Any party is free to pay the unpaid balance of any deposits and costs should another party fail to pay its share.

- (i) Any other expenditure incurred by the respective parties shall remain the responsibility of that party, unless otherwise agreed by the parties.

11. REPRESENTATION

- (a) Any party may be represented by a person of the party's choice. Representation by counsel is not mandatory. Parties other than natural persons are expected to have present, throughout the Mediation, an officer, partner or other employee authorized to make decisions concerning the resolution of the dispute and finalization of terms of settlement. The parties shall inform the Centre of the names of their representatives and advisors attending the Mediation within such time as the Centre may specify.
- (b) Each party shall confirm in writing the authority of the representative identified to settle the dispute on behalf of that party.

12. CONFIDENTIALITY

- (a) All efforts shall be taken by the parties to ensure the privacy of the Mediation proceedings. Persons other than the parties and their representatives may attend only with the permission of the parties and with the consent of the Mediator.
- (b) All information, records, reports or other documents received by a Mediator while serving in that capacity will be confidential. The Mediator will not be compelled to divulge such records or to testify or give evidence in regard to the Mediation in any adversary proceeding or judicial forum. The parties will maintain the confidentiality of the Mediation and will not rely upon or introduce as evidence in any arbitral, judicial or other proceeding:
 - (i) Views expressed or suggestions or offers made by another party or the Mediator in the course of the Mediation proceedings;
 - (ii) Admissions made by another party in the course of the Mediation proceedings relating to the merits of the dispute
- (c) Nothing which is communicated to the Mediator in private during the course of the Mediation shall be repeated to the other party or parties, without the express consent of the party making the communication.
- (d) Any settlement reached during the course of the Mediation shall be kept confidential, unless otherwise required by law or for its implementation.
- (e) Facts, document or other things otherwise admissible in evidence in any arbitral, judicial or other proceeding will not be rendered inadmissible by reason of their use in the Mediation.
- (f) Each person involved in the Mediation, including in particular, the Mediator, the parties their representatives and advisors, any independent experts and any other persons present

during the meeting of the parties with the Mediator, shall sign an undertaking to respect the confidentiality of the proceedings.

13. GENERAL PROVISIONS

- (a) No Mediator or the Centre shall be held liable for anything done bonafide or omitted to be done by him during the Mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the Mediation proceedings.
- (b) Unless inappropriate in the circumstances, Mediators shall, at the conclusion of Mediation, invite the parties and advisers and any co-Mediators or assistant Mediators, to complete a Feedback Request Form
- (c) The parties undertake that the Mediator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of dispute covered under Mediation or any other dispute in connection with the same contract. No party shall be entitled to call the Mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

(d) **Exclusion of Liability:**

The parties jointly and severally release, discharge and indemnify the Mediator and Centre in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any Mediation conducted under these Rules, save for the consequences of fraud, dishonesty or violation of Code of Conduct.

No Mediator shall be summoned by any party to appear in a Court of law to testify in regard to information received or action taken or in respect of drafts or records prepared or shown to him/her during the Mediation proceedings.

- (e) The Mediator, the Centre and its employees shall not be liable to any person for any act or omission in connection with the mediation, unless there is fraudulent or willful misconduct.
- (f) None of the parties availing the services of the Centre shall hold the Centre or any of its officers, staff, Executive Board members, Executives, Mediators liable for any loss or damage that they may claim to suffer during any process of dispute resolution and keep the Centre, its officers, staff, Executive Board members, Executives, Mediators indemnified.
- (g) Any of the above procedures may be altered by the Officer-in-Charge, in his/her sole discretion, to fit the circumstances of a particular case. Any matter not specifically addressed by these rules, or any conflict or ambiguity in these rules, shall be decided by the Officer-in-Charge. The Officer-in-Charge, in his/her sole discretion, has authority to

prepare forms, resolve procedural disputes, impose time limits on the parties, and otherwise require a party to take action or refrain from taking action.

- (h) The Centre shall have the power and authority to effectuate the purposes of these Rules, including establishing appropriate rules, procedures, guidelines and advisories governing Mediation and altering, amending or modifying these Rules in accordance with the law. The interpretation given by the Centre to any provision in this Mediation procedure shall be the correct interpretation of the provision concerned.
- (i) The parties, and the Mediator, by accepting appointment, agree that any statements or comments, whether written or oral made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to find or maintain any action for defamation, libel, slander or any related complaint, and this Rules may be pleaded as a bar to any such action.
- (j) All disputes between the Centre and service recipient(s) under these Rules shall be governed by applicable laws of India. The courts at Pune shall have exclusive jurisdiction over the dispute.

Annexure – A

Procedure for the Mediation Proceedings

1. Pre – Mediation Process:

- (a) The Mediator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.
- (b) The Mediator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.
- (c) The Mediator will conduct pre-Mediation sessions with the parties which shall last for around 1 – 2 hours (*for each party*).
- (d) During these sessions, the Mediator will collect and analyse the required facts and documents for the oncoming Mediation session. The Mediator may also conduct a meeting with the legal team of both the parties if required.
- (e) The Mediator will frame the process to be followed during the Joint Mediation Session and brief all parties of the same.
- (f) The Mediator shall fix the date, time, and venue where the parties along with their authorised representatives shall be present for the joint Mediation session are finalised.
- (g) The time frame for mediation shall be three months from the date of execution of the Agreement to Mediate, extendable only at the instance of all the parties to the dispute.

2. Joint Mediation Session(s):

- (a) The Mediator shall conduct the process in accordance with the MCCIA Mediation Centre Rules, 2021 (“**Rules**”).
- (b) A Joint Mediation Session shall normally span between 8 to 12 hours. The frequency of sessions and length of each session can be decided by the Mediator with consent of both parties.
- (c) The Mediator and all the parties shall be allowed to give their opening statements. Pursuant to the opening statements, the joint session shall consist of dialogue between the parties. The Mediator will facilitate parties to lay down their agenda and the broad issues that need to be discussed.

- (d) During the session, if the parties ever reach an impasse, the Mediator can call for a caucus or alternatively the parties can request for one as well. The caucus will be a private session between the Mediator and each party.
- (e) After every session of Mediation, the Mediator shall submit a “Mediation Record” to the Officer-in-Charge of Centre containing details of the session.
- (f) If the parties are able to agree on certain final terms, these terms will be drafted in the form of a Settlement Agreement, which if requested, shall be prepared by the Mediator.
- (g) In case an agreement is reached, the draft of the Settlement Agreement shall be finalised, vetted by the legal teams of both parties and signed by them.
- (h) In case an agreement is not reached, either partial terms can be settled through the Settlement Agreement or the parties shall decide to terminate the Mediation proceeding without signing any document.

Annexure – B

Code of Conduct

MEDIATOR’S CODE OF CONDUCT

The MCCIA Code of Conduct (“**Code**”) provides users of mediation services with a concise statement of the ethical standards they can expect from MCCIA Empanelled Mediators. All Mediators empanelled with MCCIA shall be bound by the Code.

For the purposes of this Code, an MCCIA Empanelled Mediator (also called a Mediator in this Code) is one:

- *whose competency in the practice of mediation has been certified by MCCIA Mediation Centre, and*
- *whose Profile is included on the MCCIA Mediation Centre website.*

1. OBJECTIVES

The main objectives of the code are:

- 1.1. to provide guiding principles for the conduct of mediators;
- 1.2. to promote confidence in mediation as a process for resolving disputes; and
- 1.3. to provide protection for parties who choose to undergo mediation under the MCCIA Mediation Centre.

2. MEDIATOR APPOINTMENT

2.1. Compliance to the rules

In the event that a MCCIA Empanelled Mediator fails to maintain the standards set out hereunder, the Mediator’s Profile will no longer be included on the MCCIA Mediation Centre website, and such Mediator shall be dis-empanelled by MCCIA after following due procedure.

2.2. Promotion of Mediators’ services

Subject to applicable laws and to regulations governing professional practice, Mediators will present and promote their practice truthfully and accurately. They may quote freely from, and link to, their Profile on the MCCIA Mediation Centre website and they are free to replicate that Profile, or extracts from it, for their own professional purposes.

2.3. Appointment

Before the mediation begins, Mediators will inform the parties of their relevant education, background, mediation training and experience.

- 2.4. Mediators will advise parties that they will be invited to offer the Mediator feedback on the process at any stage, including offering written feedback at the conclusion of the mediation.
- 2.5. Mediators will, prior to appointment, conduct reasonable inquiries to determine if any pre-existing relationship or interest in the subject matter of the dispute creates a real or perceived conflict of interest. The mediator will disclose any such interests and obtain the parties' consent to continue. Regardless of party consent, if the mediator thinks that the relationship or interest poses a threat to the mediator's ability to conduct the mediation impartially, the mediator shall decline the appointment.

3. DILIGENCE

- 3.1. Mediators may accept an assignment to act as Mediator in any situation in which they are competent to serve in that capacity. Mediators should ensure that they have the requisite time, energy and procedural and subject matter expertise to competently meet the reasonable expectations of the parties.

4. IMPARTIALITY

- 4.1. Mediators will always conduct mediation in an impartial manner, avoiding bias or prejudice in favour or against any party. If at any time a Mediator feels unable to conduct the process in an impartial manner, they will express that concern and withdraw from the mediation.
- 4.2. Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or may be perceived to, materially affect their impartiality. This duty to disclose is a continuing obligation throughout the mediation process.
- 4.3. The existence of relationships or interests potentially affecting, or appearing to affect, a Mediator's impartiality will not automatically imply unfitness to act as a Mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties.
- 4.4. The duty to disclose perceived or actual threats to Mediator impartiality is ongoing. Newly discovered interests or relationships creating an actual or perceived threat to Mediator impartiality must be disclosed and parties must renew their consent to proceed with the process.
- 4.5. Following any such disclosures, if any party raises an objection, the Mediator will withdraw from the mediation.
- 4.6. After accepting appointment, and until the mediation process ends, Mediators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to create an actual or perceived threat to mediation impartiality. In the case of perceived threats, mediators may proceed after full disclosure and party consent.

- 4.7. Within 12 months following the end of mediation, Mediators will not represent in an advisory capacity or accept employment with any party to a mediation in the same or a substantially related matter, unless all parties to the mediation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (e.g. as a mediator or arbitrator) that may involve some or all of the parties will not be considered a representation in an advisory capacity for the purposes of this clause.

5. MEDIATION PROCESS

5.1. Procedure

- 5.1.1. Mediators will endeavour to maintain confidentiality and ensure that the parties to the mediation and their advisers understand the characteristics of the mediation process, their roles as parties and advisers, and the role of a mediator, as well as the enforceability of any resulting agreement.
- 5.1.2. The Mediator will ensure that before the mediation begins, the parties have understood and agreed to the terms and conditions which will govern the mediation including those relating to Mediator and party obligations to respect.
- 5.1.3. The Mediator shall ensure that the Parties to the mediation have the requisite authority to take decisions and have accordingly signed the Agreement to Mediate, the particulars of which have been explained to them by the Mediator.

5.2. Fairness and Integrity of the process

- 5.2.1. Mediators will explain the mediation process to the parties and their advisers, and be satisfied that they consent to the process being used and to the Mediator selected (unless applicable law, court rules or contract require use of a particular process and/or mediator). Mediators will ensure that all parties are aware that they have an equal opportunity to engage in pre-mediation private communications with the Mediator.
- 5.2.2. Mediators will conduct the process with attention to procedural fairness to all parties. The Mediator will take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution or decision.
- 5.2.3. Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached in mediation or create or aggravate a hostile environment.
- 5.2.4. Self-determination is the right of the parties in mediation to make their own voluntary decision regarding the possible resolution. Mediators will endeavour to ensure that the parties have reached agreement of their own volition and knowingly consent to any resolution.

5.3. Termination of the process

- 5.3.1. The Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator of that preference (unless applicable law, court rules or contract require otherwise).
- 5.3.2. Mediators shall withdraw from a mediation if a negotiation among the parties appears to be moving toward an unconscionable or illegal outcome. An unconscionable outcome is one which is the product of undue pressure, exploitation or duress. An unconscionable outcome reflects one party's exploitation of an existing power imbalance to the degree that the resulting agreement "shocks the conscience" and violates accepted legal and cultural norms of fairness.

5.4. Feedback

- 5.4.1. Unless inappropriate in the circumstances, Mediators will, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete the MCCIA Feedback Request Form and return it to the Mediator.

5.5. Fees

- 5.5.1. Mediators will, before accepting appointment, agree with the parties how their fees and expenses will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions). Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.
- 5.5.2. Mediators will not suggest to the parties that their remuneration should be based on, or related to, the outcome of the mediation or engage in any malpractice or misconduct with regards to fixing of their remuneration.

6. CONFIDENTIALITY

- 6.1. Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation unless:
 - 6.1.1. compelled to make a disclosure by law or by some governmental agency having appropriate authority and jurisdiction (in which case the recipients of the confidential information shall themselves be bound to maintain the confidentiality), or
 - 6.1.2. the specific information comes into the public domain (otherwise than as a result of a disclosure by the Mediator), or
 - 6.1.3. the parties release the Mediator from the confidentiality restriction, or as necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability, or

- 6.1.4. disclosure is necessary to prevent death or imminent bodily harm or severe damage to an identifiable third party or to prevent the commission of illegal and morally objectionable acts.

Before using or disclosing such information, if not otherwise required to be disclosed by law, Mediators should make a good faith effort to persuade the party, and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.

- 6.2. The Mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided none of the details of that case are disclosed.
- 6.3. Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.
- 6.4. At no time following the end of a mediation will Mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent.

7. PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

- 7.1. Parties to a mediation who believe the standards established in this Code have not been met may make a Complaint detailing the same to the Officer-in-Charge, MCCIA Mediation Centre.
- 7.2. A Mediator against whom any such complaint is made, shall be called upon by the Officer-in-Charge, MCCIA Mediation Centre or a duly appointed sub-committee thereof to answer any allegations made with respect to his/her conduct.
- 7.3. The MCCIA Mediation Centre shall only take any action after giving the Mediator against whom the allegations are made, as well as the person making the complaint, due opportunity to be heard. During such proceedings both the Mediator and the Complainant may be assisted by legal counsel.

8. DISQUALIFICATION OF A MEDIATOR

- 8.1. Qualification to mediate does not in any way confer on a mediator a permanent right. The MCCIA Mediation Centre may remove a person from the list of mediators if, in its considered opinion, such a person is deemed to be unfit to continue as per the rules mentioned in this Code.

9. ADVERTISING

- 9.1. In advertising or offering services to clients or potential clients, the Mediator shall refrain from guaranteeing settlement or promising specific results.

10. INTERPRETATION AND APPLICATION OF THIS CODE

- 10.1. The interpretation of the provisions of this Code and of any rules or guidelines that may be issued thereunder, from time to time, shall vest solely and exclusively with the MCCIA Mediation Centre.