CONFLICT TO CO-OPERATION



CODE OF PROFESSIONAL CONDUCT FOR MEDIATORS

1. Adoption of the DiSAC Code

1.1 IR Change CC ("**IR Change**") adopts the Dispute Settlement Accreditation Council ("**DiSAC**") **Code of Professional Conduct for Mediators** (based on the International Mediation Institute Code) in full as its own code of conduct. This document sets out how that Code applies to every mediator who conducts a mediation under the auspices of IR Change.

1.2 If anything in this document conflicts with the DiSAC Code, the DiSAC Code prevails. IR Change will amend this Code whenever DiSAC amends its Code.

1.3 This Code applies to all IR Change panel mediators, co-mediators and observers, and to IR Change staff in so far as they administer mediations.

2. Competence and availability

2.1 **Competence.** A mediator will accept an appointment only if they have the training, skills and experience needed for the matter, including any relevant cultural or subject-matter knowledge. On request, the mediator will give the parties details of their training, qualifications and accreditation.

2.2 **Availability.** A mediator will accept an appointment only if they are able to give the matter the time and attention it reasonably requires and to conduct it without undue delay.

2.3 **Feedback and improvement.** At the end of every mediation the mediator will invite the parties to complete IR Change's Party Feedback Form. Mediators will maintain and develop their skills through continuing professional development in line with IR Change's CPD Policy.

3. Independence, neutrality and conflicts of interest

3.1 A mediator will at all times act, and be seen to act, independently and impartially, and will treat all parties fairly and even-handedly.

3.2 **Conflict check.** Before accepting an appointment, the mediator must check for conflicts of interest and disclose to IR Change and the parties any fact or circumstance that may create, or appear to create, a conflict of interest or a doubt about their impartiality, including:

- any personal, professional or financial relationship with a party or a party's representative;
- any financial or other interest, direct or indirect, in the outcome of the mediation;
- having acted, in any capacity other than as mediator, for one of the parties; and
- any prior involvement in the dispute.

3.3 **Continuing duty to disclose.** The duty to disclose continues throughout the mediation. Where a disclosure is made, the mediator may act only if all parties consent in writing. Where the mediator believes the conflict would prevent them from acting impartially, they must decline or withdraw, whether or not the parties consent.

3.4 A mediator will not act, or continue to act, for any party in any other capacity in relation to the same dispute after the mediation, without the informed written consent of all parties.

4. The mediation agreement, process and fees

4.1 **Mediation agreement.** Before the mediation starts, the mediator will make sure that the parties have signed IR Change's Mediation Agreement and that they understand the process, the role of the mediator and of the parties, and the confidentiality provisions.

4.2 **Procedural fairness.** The mediator will conduct the process fairly, give each party an adequate opportunity to be heard, and take reasonable steps to address any power imbalance between the parties.

4.3 **Self-determination.** The mediator will respect the parties' right to reach their own agreement and to withdraw from the mediation at any time. The mediator will not impose a settlement or pressure a party to settle.

4.4 **Feedback.** The mediator will inform the parties at the start that they will be invited to give written feedback at the end of the mediation, and will hand out or send the Party Feedback Form when the mediation ends.

4.5 **Fees.** Before the mediation, the parties will be told in writing how fees and expenses are calculated, how they will be paid and in what proportions, in line with IR Change's fee schedule. A mediator will not accept any fee, gift or benefit from a party other than the agreed fee administered by IR Change, and will not accept a fee that depends on the outcome of the mediation.

4.6 **Advice.** The mediator may help the parties to evaluate their options but will not give legal or other professional advice to any party, and will encourage parties to obtain independent advice where appropriate.

5. Confidentiality

5.1 Everything said or produced in the mediation is confidential and may not be disclosed by the mediator, except where the parties agree in writing, where disclosure is required by law, or where there is a real risk of serious harm to any person.

5.2 Information given to the mediator by one party in private session will not be disclosed to another party without the consent of the party who gave it.

5.3 The mediator's personal notes are destroyed at the end of the matter, in line with the Mediation Agreement and IR Change's Records Management and POPIA Policy.

6. Termination of the mediation

6.1 The mediator may suspend or end the mediation if:

- a party is using the process inappropriately or acting in bad faith;
- the mediator believes that continuing would not be in the parties' interests or that a fair agreement is unlikely;
- a party is unable to participate meaningfully; or
- the mediator becomes aware of a conflict of interest that cannot be resolved.

6.2 The mediator will give the parties reasons, as far as confidentiality allows, and will inform IR Change.

7. Professional conduct, insurance and promotion

7.1 A mediator will act with integrity, honesty and respect for all parties, and will not discriminate against any person on any ground listed in section 9 of the Constitution.

7.2 A mediator will not make any misleading statement about their qualifications, experience, accreditation or the likely outcome of a mediation.

7.3 Before the mediation, the parties will be told in writing whether the mediator is covered by professional indemnity insurance.

8. Complaints and discipline

8.1 Any person may complain about a mediator's service or conduct under IR Change's Complaints and Disciplinary Procedure. Every party is told about this procedure in the Mediation Agreement.

8.2 Every panel mediator agrees, in the Mediator Affiliation Agreement and sworn declaration, to be bound by this Code and by the Complaints and Disciplinary Procedure.