

## CODE OF PROFESSIONAL PRACTICE

The IPMO Code of Professional Practice ("the Code") sets out the ethical, legal, and professional obligations of IPMO Mediators.

### DEFINITIONS

For the purposes of this Code, Mediation is defined in accordance with section 2 (1)(o) of the Mediation Act 2017; as a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator/s, attempt to reach a mutually acceptable agreement to resolve the dispute.

An IPMO Mediator (also called a Mediator in this Code) is one:

whose competency in the practice of mediation has been certified by IPMO, and

who is authorised by IPMO to use the IPMO name and logo, and

whose Profile is included on the IPMO web portal at: <http://www.theipmo.ie>

Mediation Settlement means an agreement in writing reached by the parties to a dispute during the course of a mediation and signed by the parties and the mediator.

### 1 MEDIATOR APPOINTMENT

1.1 Entitlement to use the designated professional practice title; "IPMO Qualified Mediator NQ", or "IPMO Qualified Mediator Q", or "IPMO Certified Mediator" and the IPMO logo.

In the event that an IPMO Mediator fails to maintain IPMO requirements for certification and practice, or no longer qualifies as an IPMO Mediator, use of the designated professional practice title and use of the IPMO name and logo will end, and the Mediator's Profile will no longer be included on the IPMO web portal.

1.2 Promotion of Mediators' services

Subject to Irish law, in particular the Mediation Act 2017 "The Act", EU law and any regulations governing professional practice in Ireland, Mediators will present and promote their practice truthfully and accurately. They may quote freely from, and link to, their Profile on the IPMO web portal and they are free to replicate that Profile, or extracts from it, for their own professional purposes.

1.3 Appointment

1.3.1 Before the mediation begins, Mediators will provide the parties with the following details; their qualifications, training and experience, continuing professional development and this Code of Professional Practice, in accordance with section 8 (1)(b) of the Act.

1.3.2 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.

## 2 DILIGENCE

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.

## 3 IMPARTIALITY

3.1 Mediators will always conduct mediation in an impartial manner, avoiding bias or prejudice in favour or against any party. Bias or favouritism can result from several sources: mediator reaction to a mediation participant's personal characteristics, background or values; mediator personal, professional or financial interests in the subject matter of the dispute; or pre-existing relationships with any mediation participant. A mediator shall not accept a gift, favour or loan, or other item of value, that raises a question as to the mediator's actual or perceived impartiality. 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.

3.2 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.

3.3 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 and the Mediator.

3.4 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 during a mediation must be disclosed and parties must renew their consent to proceed with the process.

3.5 Following any such disclosures, if any party raises an objection, the Mediator will withdraw from the mediation.

3.6 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.

3.7 Within 12 months following the end of a 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.

## 4 MEDIATION PROCESS

### 4.1 Procedure

Mediators will endeavour to 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, that participation is voluntary, and that the parties determine the outcome of mediation as well as the enforceability or not of any resulting agreement in accordance with the provisions of section 11 (1) and (2) of the Act.

4.2 The Mediator will ensure that before the mediation begins, an Agreement to Mediate is signed which contains the information required set out in section 7 of the Act (a)-(g). Mediators will ensure 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 confidentiality as set out in section 10 of the Act. Where the Mediator employs a process model that includes pre-mediation meetings, they will be mindful that mediation does not commence until an Agreement to Mediate is signed and the confidentiality provisions of the Act may not apply and will ensure that any such meetings are covered by a confidentiality agreement.

4.3 The Mediator will expedite the process as required under the Act and conduct the mediation in a manner that protects the quality of the process, either in person or when using on-line fora.

## 5 FAIRNESS AND INTEGRITY OF THE PROCESS

5.1 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).

5.2 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 expert advice (eg tax or financial) before finalising any resolution.

5.3 Mediators may, at the request of all the parties, make proposals to resolve the dispute, but it shall be for the parties to determine whether to accept such proposals in accordance with section 8 (4) of the Act.

5.4 Where the parties decide that a mediation settlement has been reached between them and that it is to be enforceable between them, the Mediator shall ensure that each party is aware of their right to seek legal advice before signing in accordance with section 8 (2)(d) of the Act and should be advised to do so. The Mediation Settlement should clearly state that the parties were so advised during the course of mediation and the decision that the parties made in relation to obtaining such advice.

5.5 Where the parties engage in mediation on the invitation of the Court in accordance with section 16 of the Act, and mediation does not take place or breaks down and proceedings are re-entered, Mediators must prepare and submit a Mediator Report to the Court as provided in section 17 of the Act.

5.6 Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached in mediation or create or aggravate a hostile environment. Mediators will endeavour to ensure that the parties have reached agreement of their own volition and knowingly consent to any resolution.

## 6 TERMINATION OF THE PROCESS

6.1 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).

6.2 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 or public policy.

6.3 Where the Mediator wishes to withdraw from a mediation they must give notice in writing to the parties stating the general reasons for the withdrawal. The decision to withdraw shall not of itself prevent the mediator from again becoming the mediator in that mediation.

## 7 FEES

7.1 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), and these terms shall be set out in the Agreement to Mediate, and the Contract for Service where the contracting party is not a party to the mediation. Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.

7.2 Mediators will ensure that the parties are aware that remuneration is not based on, or related to, the outcome of the mediation, as provided in section 6 (10) of the Act.

## 8 CONFIDENTIALITY

8.1 Mediators will keep confidential all information acquired in the course of serving as a Mediator in a mediation, and will not disclose communications records or notes unless it is necessary:

- in order to implement or enforce a mediation settlement,
- to prevent physical or psychological injury to a party
- where it is required by law
- in the interests of preventing or revealing the commission of a crime, concealment of a crime or a threat to a party

- to prove or disprove a civil claim concerning the negligence or misconduct of the mediator occurring during the mediation or a complaint to IPMO concerning such negligence or misconduct.

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.

8.2 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.

8.3 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.

## 9 PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

9.1 An IPMO Mediator may consult his/her Supervisor or Mentor about any professional or ethical dilemmas.

9.2 A party to a mediation who believes there has been a lack of compliance with this Code may activate the IPMO complaints procedure.

This Code is inspired by and based on:

European Code of Conduct for Mediators of the European Commission (2004)

International Mediation Institute Code of Professional Conduct

Adherence to this Code does not replace or qualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply in specific circumstances.