

## CHAPTER 12

# FAMILY MEDIATION

### DEFINITION OF FAMILY MEDIATION AND DIVORCE

In the Family Mediation Booklet<sup>1</sup> published by the Judiciary in December 2005, Family Mediation is defined as follows: **12-001**

“Family Mediation is a problem-solving process designed to help separating/divorcing couples to reach their own mutually acceptable agreements regarding the on-going arrangements for their children and/or the resolution of financial matters. It is a voluntary process in which a trained, impartial third person, the mediator, can assist both parties to communicate and negotiate issues in a confidential setting.”

In the Code of Practice of the Law Society of Hong Kong<sup>2</sup>, Family Mediation is defined as follows: **12-002**

“Family Mediation is a non-adversarial, co-operative decision-making process in which a qualified and impartial third party, “the mediator”, helps family members resolve by agreement their disputes, including but not limited to those arising from separation or divorce. The resolution is to be voluntary and based upon sufficient information and advice for each party.”

The Hong Kong International Arbitration Centre has similar definition to that of the Law Society of Hong Kong. Both definitions include the basic features of mediation such as the mediator is a qualified, impartial and neutral third party, the mediation process is voluntary, the negotiation is a confidential and the settlement agreement is reached by mutual consent. **12-003**

The definition in the Family Mediation Booklet of the Judiciary is narrower in scope in comparison to the definition of the Law Society of Hong Kong. The former only relates to issues arising out of separation and divorce. The issues usually encompass on-going arrangements for children of the separating or divorcing couple and/or resolution of financial matters of the family. **12-004**

The definition in the Law Society of Hong Kong is wider in scope. Family Mediation include any issues of disagreements, in most cases financial matters, **12-005**

<sup>1</sup> Family Mediation Booklet, Judiciary 2005.

<sup>2</sup> Code of Practice for Family Mediators of the Law Society of Hong Kong, 2 May 2008.

between any family members, including those issues arising out of separation or divorce. In this chapter, family mediation relating to separation or divorce is discussed; property and estate disputes between family members are discussed in the next section.

#### **Brief history of family (divorce) mediation**

**12-006** In the 1980s, a few Non-Government Organisations offered a mediation service in Hong Kong. These included the Hong Kong International Arbitration Centre, Hong Kong Family Welfare Society, Hong Kong Catholic Marriage Advisory Council, etc.

**12-007** In 1995, a working group to Review Practices and Procedures Relating to Matrimonial Proceedings was set up by the Chief Justice. The Working Group supported the introduction of mediation in the Family Court. However, as there were only a limited number of qualified mediators, the Working Group opined that family mediation should only be introduced in Hong Kong until a reasonable number of qualified mediators were available<sup>3</sup>.

**12-008** In October 1997, a Working Group to consider a Pilot Scheme for the Introduction of Mediation into Family Law Litigation in Hong Kong was convened. One of the recommendations of this Working Group was to launch a three-year pilot scheme in the Family court to test the effectiveness of mediation in resolving matrimonial disputes<sup>4</sup>.

**12-009** In June 1999, a Mediation Coordinator's Office (MCO) was set up in the Family Court Building<sup>5</sup>. The MCO was funded and monitored by the judiciary. In May 2000, the three-year pilot scheme was launched. A mediation service was provided to separating or divorcing couples free of charge. They could choose mediation before the start of legal proceedings or at any time during the proceedings. Participation in mediation is entirely voluntary. During the period of the three year pilot scheme, the Hong Kong Polytechnic University was commissioned by the judiciary to compile a consultancy study on the said pilot scheme. According to the final report of January 2004, the result of the pilot scheme was very positive<sup>6</sup>.

**12-010** Mediation has now become part of the process of matrimonial proceedings. The MCO is still providing support to the service. Participation in mediation remains voluntary. Parties have to pay the mediator for the service.

#### **Mediation Coordinator's Process at the Family Court**

**12-011** When a divorce petition is filed to the Family Court registry, among other documents a signed Petitioner's Certificate as to mediation must be filed together with the petition. Copy of the said Petitioner's Certificates will be sent to the MCO. As regards the respondent, when he or she files her or his acknowledgement of service to the

<sup>3</sup> See Report of the Working Group to Review Practices and Procedures Relating to Matrimonial Proceedings (August 1996), Part XII.

<sup>4</sup> See the Report of the Working Group to Consider a Pilot Scheme for the Introduction of Mediation into Family Law Litigation in Hong Kong (1999) p 17 para (8.1) (m).

<sup>5</sup> M2 Floor, District Court, Harbour Road, Wanchai, Hong Kong.

<sup>6</sup> Evaluation Study of The Pilot Scheme on Family Mediation, Final Report by the Hong Kong Polytechnic University (January 2004).

Registry, the respondent will also sign and file a Respondent's certificate as to mediation. A copy of the said Respondent's certificate will be sent to the MCO. If a party in the divorce proceedings is legally represented, the solicitor has to sign on the said certificate as well.

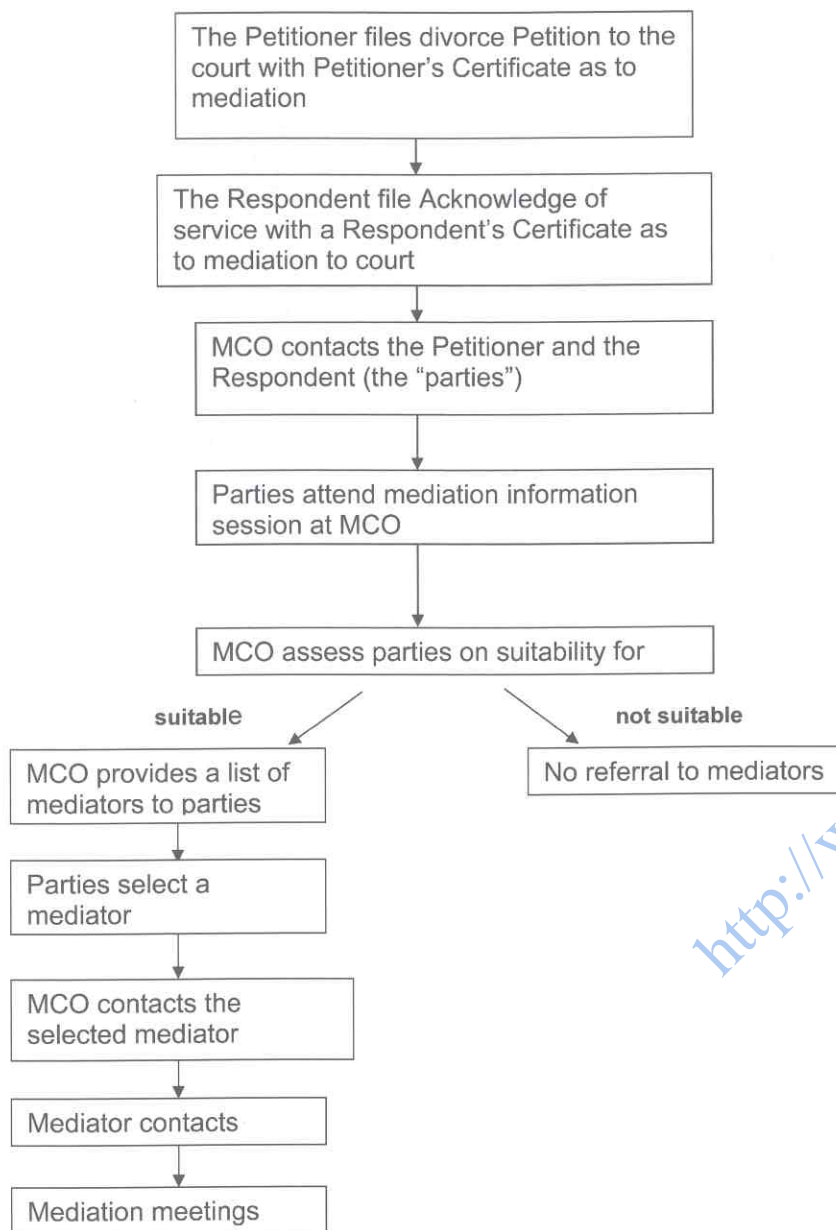
After the MCO receives the above mentioned certificates, MCO invites parties who are willing to attempt mediation to attend a mediation information session. The Mediation Coordinator regularly holds information sessions to disseminate information to the parties relating to the concept of mediation, the roles of the mediator, the various features of mediation, etc. The information session is about one hour long. At the session, a video of a role play of divorce mediation is shown.

After the parties attended the information session, the Mediation Coordinator speaks to the parties on an individual basis and assess their suitability for referral to mediators. If the Mediation Coordinator considers that mediation is appropriate for the parties to resolve their disputes, a list of accredited family mediators is given to the parties. The parties can select a mediator of their choice. After the selection of mediator, the Mediation Coordinator will contact the selected mediator. Then, the mediator will directly contact the parties and handle the case from thereon.

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Mediation Coordinator's office at Family Court  
Process flowchart



Some special features of divorce mediation

(a) *Ventilation of emotions*

It is recognized that when a marriage breaks down, it causes emotional disturbance to the divorcing couple. Many feel depressed, hurt, angry, helpless or uncertain as to what to do, etc. The psychological dynamics are complex. Wiseman described the emotional process of a divorcing couple as a series of five overlapping stages: denial, loss and depression, anger and ambivalence, reorientation of life-style and identity and acceptance and integration<sup>7</sup>. The aim of mediation is not to cure the emotional turmoil of the couple. For some parties, counseling or expert assistance may be needed. If it is considered that mediation can proceed, the mediator will allow the venting of the parties' emotion at the mediation meetings. Active listening is essential for the mediator to understand the underlying concerns of the parties.

At the first contact with the divorcing couple, which is usually via a telephone call or at the Intake Session, it is important for the mediator to listen carefully to the party's own version of stories. During this contact, the mediator can encourage and allow the venting of emotion of the party. The mediator also will evaluate the emotional stage of the party and be the emotional supporter of each party. After the mediator has a clear understanding of the party's emotion, the mediator can use different techniques to assist the parties to negotiate with each other at the Joint Session. The more thorough venting of emotion by the party, the better the party is prepared emotionally for the upcoming Joint session with the other party. The Mediator can acknowledge the emotion of the party by the following techniques:

- (i) Acknowledge to the party that her or his emotion is normal.

The Mediator can tell the party that researchers on the psychology of divorcing couples have identified different emotional patterns at various stages of divorce in divorcing couples. For instance, the female party left the family home with her boyfriend. The male party felt intimidated and hurt. The mediator can assure the male party that what he is feeling currently is normal and that, as time passes, like many others in his situation, he will feel better and adjust to his new life style.

- (ii) Prepare the other party as to how to deal with other party's emotion.

The Mediator can inform a male party what his emotional stage is and tell him that the emotional stage of the female party is usually different from him. For instance, the female party was depressed when she received the divorce petition from the male party alleging that she was not a loving mother to their child. The mediator can educate the male party that it is often the case for divorcing couple that each party is individually in a different kind of emotional stage at that period of time. Therefore, at

<sup>7</sup> See Social Casework, Family Service Association of America (1975) V 56, pp 205-212 Crisis theory and the process of divorce, Wiseman, Reva S.

## FUTURE DEVELOPMENT OF MEDIATION

### INTRODUCTION

Much progress has been made in the development of ADR in the common law jurisdiction since the beginning of the 1970s. In Hong Kong, from time to time mediation referred to as conciliation and in the early days of the 1980s mediation was used in various construction contracts. Not until the Airport Cored projects in 1996 was the mediation clause formally put into the condition of contract for the airport cored projects and subsequently put into the Standard Condition of Contract (Building Contract). Since then, various forms of dispute resolution clauses have been used in contracts of all kinds. Some businesses and law firms systematically canvass cases for ADR potential and some law firms have set up ADR Practice Groups to promote various forms of ADR. More and more individuals are interested in the study of ADR, including both arbitration and mediation. In 2007, the Chief Justice and the Department of Justice of the Hong Kong Special Administration Region Government finally begin to promote mediation proactively as an effective means for resolving disputes and to encourage the court to consider cases that are suitable for mediation.

16-001

### THE JUDICIARY

The Hong Kong Judiciary issued Practice Direction 31 on February 12 2009, in other words that all legal representatives have the duty to assist the court to help parties to settle their case through mediation. The Hon. Chief Justice Andrew Kwok-nang Li, at the Ceremonial Opening of the Legal Year 2009, said that mediation is the means to facilitate the settlement of disputes and that the court has the duty as part of active case management to further that objective by encouraging and facilitating the use of this process. He further illustrated that the court would take into account all circumstances when exercising its discretion on costs, including any unreasonable failure of a party to engage in mediation. He also emphasised that the promotion of mediation as an alternative and complementary method of dispute resolution to litigation is plainly in the public interest. Its benefits are well known: the reduction in stress, the saving of time and costs and the achievement of a satisfactory solution. The court will fully support and keep up the momentum in developing mediation.

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The pilot scheme for family mediation in Hong Kong has been proven to be successful with an over 70 percent success rate. Many law and engineering schools in Hong Kong now have ADR courses or Master's programmes in ADR. In August 2009, there were around 500 accredited mediators in Hong Kong. They are involved in either paid commercial mediation or *pro bono* schemes under various organisations in Hong Kong. Qualified individuals have increased in the last few years and the use of mediation in our community is getting to be more popular.

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**16-004** However, there is still much room for improvement in the development of mediation in Hong Kong. Many sectors of our community are still unknown to the mediation process. Many people still have doubts about the use of the mediation process or they do not know about their existence. Another related deterrent may be the absence of mechanisms for ensuring high standards in the provision of alternatives to our present court system. The lack of public funding in the promulgation of mediation and to the various non-profit mediation providers are important factors for its slow popularity in our community. In bureaucratic organizations, there is also a tendency of dumping the problem in court, rather than risking possible criticism from the public or superiors as an unwise settlement. Many lawyers know very little about ADR. Lawyers and clients are apt to agree that adversary combat in a judicial arena is the normal, socially acceptable and a psychologically satisfying method of resolving disputes. Many law firms throughout the years have built up immense litigation departments; the very existence of these expanding litigation departments constitutes a self-reinforcing movement towards litigation (See *Goldberg* in list of references).

**16-005** It must through the education of lawyers, judges, law students and surely the general public that the promulgation of mediation in Hong Kong can be achieved in the long run. This must start at an elementary or high school level. Various institutes and organisations have already undergone various forms of training, either through short courses or full mediator training courses. This not only provides a means for disputes arising from school disputes but also an appreciation by the students of an available technique for resolving disputes in life with mediation. All concerned and the public must gain and enhance their understanding of mediation and its advantages. Mediation should be a compulsory part of the PCLL course; the professional qualification course for lawyers<sup>1</sup>.

### THE HKSAR DEPARTMENT OF JUSTICE

**16-006** In his speech at the Hong Kong Mediation Centre at the eighth annual meeting on 5 February 2007, The Secretary for Justice Hon Wong Yan Lung stated that there was plenty of room for improvement in the development of mediation. The public needs to endorse the benefit of mediation. The quality of mediation services needs to be improved and acceptable internationally. He also believes that community mediation is an area that can be further developed for youths and neighbourhood disputes. A working party was set up to look into the use of mediation in the High Court, District Court and Land Tribunal for Civil cases. Much work has been done but the move for further use of mediation is still much needed<sup>2</sup>.

**16-007** In addition, the Secretary for Justice also states in his speech at the Ceremonial Opening of the Legal Year 2009 that a Working Group on Mediation has been set up to look into the promulgating of a Code of Conduct for Mediators, running a pilot scheme to provide venues for community mediations, strengthening mediation

<sup>1</sup> Speech delivered by the Hon. Chief Justice Andrew Kwok-nang Li at conference on "Mediation in Hong Kong: The Way Forward", 30 November 2008.

<sup>2</sup> The Secretary for Justice Hon. Wong Yan Lung delivered his speech at the Hong Kong Mediation Centre 8th annual meeting on 5 February 2007.

training in higher education, inviting the commercial sector to sign pledges to mediate before taking action in court, and considering the need of legislation to regulate mediation. The Legal Aid Department has confirmed that, following the implementation of the Civil Justice Reform when mediation becomes an integral part of civil procedures, for those who qualify legal aid will cover mediation in all civil cases to which the Rules of the High Court and District Court are applicable. Mediation in matrimonial cases has to be funded separately. Legislative amendments are to be made so that legal aid will also cover mediation in legally aided matrimonial cases<sup>3</sup>. The Department of Justice has already established a framework on the growth of mediation in Hong Kong. However, other areas of development in mediation are still required.

### MEDIATION AS A CAREER

As for a career in ADR, one must establish a good reputation in the mediation industry; others need to respect you for your fairness, integrity and ability in your field. One can begin with taking a basic course in mediation or obtain a degree in dispute resolution. You must get yourself accredited by one of the mediation organisations in order to practice as an accredited mediator. You must obtain mediation experience through volunteering work in one of the *pro bono* mediation schemes or be an observer of a real case. You can go on the various mediator panels and try to search for part-time paid mediation work. Through practice, one can obtain sufficient experience in handling mediation independently. It is also advisable to find a mentor, who may show you good example of actual mediation done and provide guidance to you when needed. You can also submit articles in various publications in the mediation field to enhance your reputation in the ADR community. One can also assist in the tutoring or lecturing on mediation courses. This will require one to research into the theoretical and the various case studies by experience and successful ADR practitioners. This will enhance your knowledge in mediation. Hard work and dedication towards mediation with time spent will certainly provide you with a good basis to practice as a good mediator in the industry.

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### PROSPECT OF MEDIATION

Mediation needs much further development in Hong Kong. One of the fundamental questions is: is mediation going to develop as arbitration in Hong Kong, governed by an ordinance with strict rules and regulation or does it need to be flexible, minimum cost, privacy to parties and end users' dictate outcome? All studies and many practitioners indicate that this needs to be a simple and end-user-friendly process. Therefore, the least number of rules and regulations there are the better for mediation to work effectively and with a higher degree of success in settlement. The authors truly believe that this is the future for mediation in Hong Kong and must be maintained. In the design of mediation process and procedure, one must not

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<sup>3</sup> Speech delivered by the Secretary for Justices at the Ceremonial Opening of the Legal Year 2009.

underestimate the ability of the parties to settle and must not create a complicated procedure to obstruct parties in their settlement. The concept of "if mediable, must mediate" needs to educate parties and practitioners. This is regardless of whether the dispute has been referred to litigation or another ADR process. Mediation is always an alternative dispute resolution method that can be used at any stages of the proceeding. The wishes of the parties need to be respected and they must be given the opportunity to mediate at all times.

### FURTHER APPLICATION OF MEDIATION IN HONG KONG

- 16-010** This handbook presents various disputes that use mediation as a means to resolving disputes. The list is not exhaustive and surely has many untouched territories. Some disputes described herein did not use mediation as a resolution method in Hong Kong. Therefore, more usage through the encouragement of both the Government and private sectors is needed. A whole area of criminal mediation has yet to be explored and surely is area field that warrants a great deal more attention. Traffic offenders can be a good starting point in this area. Cases such as minor injury-involved parties, libel, internet offenders, trespassing, infringement of intellectual properties rights, and production of fake goods can also be considered. Minor offenders can benefit from the use of mediation.
- 16-011** Other community mediation areas such as people mediation have been practiced extensively in China, of which much is unknown to the Western world. This area can also be explored. Simplified form of mini-mediation can also be considered. Much research in this area is needed. Environmental issues in mediation are often related to land use rights and a priority in environmental issues can surely be an area of exploration and benefit Hong Kong.
- 16-012** Consumer disputes on products can use mediation as a resolution method. More application of mediation can also be used in the area of personal injury cases. The Hong Kong legal aid system can make use of mediation to cut down cost of litigation. Government regulatory actions such as administrative disputes can employ mediation as a mean of resolution.
- 16-013** Even though Hong Kong has used mediation in many of the business community disputes, *ie* shareholder, copyright, insurance and trading disputes but it has not been used enough in the area of security trading and financial services. Hong Kong is one of the international financial centres in the world. We must put more emphasis on the use of mediation in the financial market. Hong Kong has been quite advanced in the development of mediation in the construction, family divorce area, as compared to other AESAN countries. However, much work is still needed to enhance the use of mediation in various areas, such as schools, communities, and labor disputes.
- 16-014** Deal mediation is also another new area that can be explored alongside the future development of mediation in Hong Kong. In 1999, Mike Hager had already written a paper on this subject for international business. The deal mediator with no vested interest in the outcome can achieve a deal that is best for all parties. The deal mediator can be a cushion for different negotiating styles, foster effective communication,

focus on parties needs and interests, prevent future conflict, and produce fair and wise outcomes (Ritchell, see list of references). Hong Kong being an international centre, much work in this area can be explored.

### CONCLUSION

Hong Kong can become a centre for dispute resolution of Asia. However this will require the mediation community and the Hong Kong SAR government to promote this concept as a whole. Other organisations such as the Hong Kong Trade Development Council, the Hong Kong Arbitration Centre, the Hong Kong Mediation Centre, Law Society of Hong Kong, the Bar Association and all practitioners of mediation need to contribute towards this important task. In order to encourage mediation in Hong Kong, one can make reference to Japan whereby the court will charge a lesser litigation fees if parties decide to use mediation. Lawyers will also charge a lesser fee in Ontario, Canada to encourage parties to use mediation. Much support from both the government and practitioners is still required for mediation can be used more extensively.

There is still a long way before mediation can be commonly used and accepted by the general public and reaches a satisfactory level of maturity comparable to that in some other common law jurisdictions. We, as practitioners of mediation, must do our utmost to promulgate mediation which we believe is the best form of alternative dispute resolution technique for the public in settling disputes. At the end of the day, it is the end users' decision to decide the best form of resolution method. Mediation has been practiced for over 3000 years and it is time for us to revamp this excellent technique of the past for our future generation.

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16-016

## THE LAW SOCIETY OF HONG KONG MEDIATION AGREEMENT\*

### SAMPLE MEDIATION AGREEMENT (to be adapted as appropriate)

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN \_\_\_\_\_ (hereinafter described as the MEDIATOR)  
AND

\_\_\_\_\_ of \_\_\_\_\_

AND

\_\_\_\_\_ of \_\_\_\_\_  
(each a "party" and together the "parties")

#### 1. Introduction:

- 1.1 The parties have a dispute which they cannot themselves resolve.
- 1.2 The parties desire to achieve a resolution of their dispute which is acceptable to each of them.
- 1.3 To reach their resolution, the parties wish to have their dispute mediated and the Mediator agrees to mediate the dispute.

#### 2. Agreement

- 2.1 The parties together and individually request the Mediator to mediate their dispute and the Mediator hereby agrees to do so.
- 2.2 The parties and the Mediator agree that the terms and conditions upon which the Mediator has agreed to mediate the dispute are contained in this Agreement and in the current Rules for mediation published by the [The Law Society of Hong Kong] ("the Rules").
- 2.3 The parties agree with each other and the Mediator to be bound by the terms and conditions contained in this agreement and for the mediation to be conducted in accordance with the Rules, a copy of which shall be signed by the parties.
- 2.4 Expressions used in this agreement are defined and have the meaning given to them in paragraph 11 of this agreement. This agreement is subject to the Rules and in the event of any discrepancy the Rules shall have precedence.

#### 3. Conduct of the Mediation

- 3.1 The mediation, all preliminary steps, conferences and individual sessions, shall be conducted in accordance with the Rules.

- 3.2 The Mediator may communicate with a party or the parties orally and/or in writing.
- 3.3 The parties agree to attend the mediation venue at the time and place prescribed by the Mediator from time to time and the parties shall comply with every reasonable request of the Mediator.

#### 4. The Role of the Mediator

- 4.1 The Mediator will facilitate discussions between the parties to assist them to reach their own agreement and will not impose an agreement upon the parties.
- 4.2 The Mediator will conduct himself without bias toward or against any party.
- 4.3 The Mediator shall not have any pecuniary or other interest or be connected in any way with either of the parties or any of their properties.
- 4.4 The Mediator acknowledges that he has disclosed to the parties to the best of his knowledge any prior dealings he has had with either of the parties and any interest in the matter.
- 4.5 If, in the course of the mediation, the Mediator becomes aware of any circumstance that might reasonably be considered to affect his capacity to act impartially he will immediately inform the parties of those circumstances. The parties will then confer and if agreed continue with the mediation.
- 4.6 The Mediator will not make decisions for the parties.
- 4.7 Although the parties acknowledge by signing this Agreement that they are aware that the Mediator has professional qualifications as a lawyer, the parties specifically acknowledge that it is no part of the function of the Mediator:-
  - (a) to give professional advice to either of the parties or
  - (b) to make decisions for or on behalf of a party to resolve a dispute.
- 4.8 The Mediator may at any time upon giving of a 7 day written notice to the parties terminate this Agreement and abandon the mediation if in his judgement further efforts at mediation would not lead to a settlement of the dispute. If this Agreement is so terminated, the Mediator shall be paid at the rate and in the manner set forth in clause 10 hereof up to the date of termination.

#### 5. The Parties

- 5.1 Each of the parties agrees that they came to the mediation voluntarily and that neither has exerted any pressure or influence over the other to participate in the mediation.

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- 5.2 The parties confirm that they each have a desire and ability to resolve their dispute.
- 5.3 The parties each acknowledge that they are not aware of any impediment to their signing terms of settlement or acknowledging any settlement reached at the mediation.

#### 6. Relationship between the Parties and the Mediators

6.1 The Mediator will not have a separate meeting or discussion with either party except:

(a) immediately prior to the mediation at the individual session to discuss and explain the purpose, function and parameters of the mediation;

or

(b) with the knowledge of the other parties during the course of the mediation process.

6.2 The parties acknowledge that provided each such meeting is with the knowledge of the other parties, the Mediator may meet with either party alone as frequently and for such lengths of time as he in his absolute discretion thinks fit.

6.3 Information, whether oral or written, disclosed to the Mediator by a party in the absence of the other party will be confidential, but may be disclosed by the Mediator to the other party with the permission of the party providing the information.

6.4 The parties agree that each of them is entitled to consult and retain lawyers for counsel and advice concerning their rights, interests and obligations in the dispute and they may consult with their lawyer on these matters. By agreement, lawyers representing the parties may be present during the mediation.

6.5 The parties acknowledge and agree as between themselves and the Mediator that for a successfully mediated agreement, open and honest communications are essential and, accordingly, all written and oral communications, negotiations and statements made in the course of the mediation will be treated as privileged settlement discussions and are absolutely confidential, therefore:

(a) The Mediator will not reveal anything discussed in the mediation unless with permission of both parties or compelled by law to do so.

(b) Parties will not, at any time before, during or after the mediation, call the Mediator as a witness in any legal or administrative proceedings concerning the dispute.

(c) The parties agree not to subpoena or demand the production of any records, notes or documents of the Mediator concerning this dispute. To the extent that any of the parties may have a right to demand those documents, that right is hereby expressly waived.

(d) If, at a later time, either party subpoenas the Mediator that party agrees to reimburse to the Mediator expenses which he incurs (including all legal fees on an indemnity basis) plus the fee per hour prescribed in the schedule for all the time that is taken by him to attend to the matter, including all costs of defending such subpoena.

(e) The Mediator is not required to maintain notes or records of the mediation.

(f) The parties will respect the Rules which provide that the Mediation is private and confidential and that every document, communication, or information disclosed, is disclosed on a privileged and without prejudice basis (Rule 12).

#### 7. Termination

7.1 While it is hoped that the parties will reach agreement, it is understood that either or both parties may, at any time, withdraw from the mediation.

7.2 If the Mediator determines that it is not possible to resolve the dispute through mediation or for any other reason, the Mediator may in his discretion terminate the process.

#### 8. Settlement of the Dispute

8.1 When an agreement between the parties is reached the Mediator will write it down. The parties can then agree to either:-

(a) sign the agreement and make it binding between them to the extent that the law may allow, including allowing it to be disclosed;

(b) accept it as a "without prejudice" memorandum of understanding upon which each party can consult their lawyer. The parties' lawyers shall thereafter be responsible for concluding binding terms of settlement between the parties although a further meeting with the Mediator may be required.

#### 9. Exclusion of Liability and Indemnity

9.1 The Mediator will not be liable to a party (except in the case of fraud) for any act or omission, (whether negligent or misleading or otherwise) in the performance or purported performance of the Mediator's obligations under this Agreement.