**NABFAM Code of Professional Conduct for Mediators**

**1. Mediator Appointment**

**1.1** Entitlement to use the title “Accredited Mediator” and the Board logo In the event that an Accredited Mediator fails to maintain the Board’s requirements for certification, or no longer qualifies as an Accredited Mediator, use of the title Accredited Mediator and use of the Board’s name and logo will end, and the Mediator’s Profile will no longer be included on the Board register.

**1.2** Promotion of Mediators’ services subject to applicable laws and to regulations governing professional practice, Mediators will present and promote their practice in a truthful way. They may quote freely from, and link to, the NABFAM webpage.

**1.3** Appointment Before the mediation begins, a Mediator will advise the parties (in the mediation agreement or otherwise in writing):

a) About their relevant background and experience;

b) Under the auspices of which NABFAM member organisation the service is being conducted, and whose code of conduct the Mediator will observe;

c) Which process will apply in the unlikely event of a party believing the Mediator has not met the standards of the stated code of conduct;

d) That at the end of the process they will be invited to offer written feedback on the process and on the Mediator’s role.

**2. Diligence, Independence, Neutrality, Impartiality**

**2.1** Diligence: A Mediator may accept an assignment to act as a Mediator in any situation where he/she feels competent to serve in that capacity.

**2.2** Independence, Neutrality and Impartiality

**2.2.1** A Mediator will always act in an independent, neutral and impartial way. A Mediator shall act in an unbiased manner, treating all parties with fairness, equality and respect. If at any time a Mediator feels unable to conduct the process in an independent, neutral and impartial manner, they will express that concern and will offer to withdraw from the mediation.

Such circumstances may include:

* financial or personal interests in the outcome of the mediation;
* existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Mediator is aware;
* other potential sources of bias or prejudice concerning a person or institution which may affect that Mediator’s independence, neutrality or impartiality or reasonably create an appearance of partiality or bias;
* Ensuring that the mediator does not endorse or promote any particular product, or give financial advice (as contemplated in FAIS legislation).

**2.2.2** A Mediator will not accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affect their independence, neutrality or impartiality. This duty to disclose is a continuing obligation throughout the mediation process.

**2.2.3** The existence of circumstances potentially affecting, or appearing to affect, a Mediator’s independence, neutrality or impartiality will not automatically imply unfit to act as a mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.

**2.3 Conflicts of Interest**

**2.3.1** A Mediator will conduct reasonable inquiries to determine if any interests, conflicts of interest or potential biases may exist. A Mediator will have a continuing duty to disclose any interests, conflicts of interest or potential biases that may become apparent during the mediation process.

**2.3.2** Following any such disclosures, a Mediator will decline to act as a Mediator in a particular case if any of the parties raises an objection, unless a contract or applicable law or Court Order nevertheless requires the Mediator’s participation. Even then, if a Mediator personally believes that the matters disclosed would inhibit his/her actual impartiality, the Mediator should withdraw.

**2.3.3** After accepting the appointment, and until the mediation process ends, a Mediator will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to affect or might reasonably create the appearance of conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.

**2.3.4** A Mediator will not represent in an advisory capacity any party to a mediation in the same or a substantially related matter.

**2.3.5** At no time following the end of a mediation will a Mediator 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.

**3. Mediation Process**

**3.1 Procedure**

A Mediator will satisfy him/herself 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. 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 obligations of confidentiality on the Mediator and on the parties. It is best practice for those terms to be contained in a written Mediation Agreement unless the parties or the circumstances dictate otherwise.

**3.2 Fairness and Integrity of the process**

**3.2.1** The Mediator will explain the mediation process to the parties and their advisers, and be satisfied that that they consent to the process and to the Mediator (unless applicable law, court rules or contract require use of a particular process and/or mediator). A Mediator will ensure that, if there are to be any pre-mediation private communications with the Mediator, all parties are aware that they will have equal opportunities to raise issues.

**3.2.2** The Mediator will conduct the process with fairness to all parties and 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 finalising any resolution.

**3.2.3** The Mediator will take reasonable steps to prevent any misconduct that might invalidate an agreement reached at a mediation or create or aggravate a hostile environment. The Mediator will also be satisfied that the parties have reached agreement of their own volition and knowingly consent to any resolution.

**3.3 Termination of the process**

**3.3.1** The Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator and all other parties without being required to give any justification for doing so.

**3.3.2** The Mediator may withdraw from a mediation if a negotiation among the parties assumes a character that to the Mediator appears unconscionable or illegal, or there appears to the Mediator to be no prospect of progress and/or resolution.

**3.4 Fees**

**3.4.1** The Mediator will, before accepting his/her appointment, agree with the parties on how his/her fees and expenses will be calculated, and how he/she will be paid by the parties and, if shared between the parties, in what proportions. The Mediator who withdraws from a matter will return to the parties any fees already paid relating to the period following withdrawal.

**3.4.2** The Mediator will not suggest to the parties that his/her remuneration should be based on or related to the outcome of the mediation.

**4. Confidentiality**

**4.1.1** The Mediator will keep all information acquired in the course of serving as a mediator in a mediation confidential unless:

* Compelled to make a disclosure by law, by a court or by some governmental agency having appropriate authority and jurisdiction; or
* Required under paragraph 5.1, in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality; or
* The specific information comes into the public domain (otherwise than as a result of a disclosure by the Mediator); or
* The parties release the Mediator from the confidentiality restriction; or
* It is necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability.

**4.1.2** 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.

**4.2** The Mediator will discuss confidentiality with the parties before or at the beginning of the mediation process and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.

**4.3** The Mediator may use or disclose confidential information obtained during a mediation when, and to the extent that, he/she believes it to be necessary to prevent death or serious physical harm or damage from arising, or believe an illegal act may realistically arise.

**5. Professional Conduct Issues and Complaints**

**5.1** An Accredited Mediator may consult his/her NABFAM member organisation regarding any professional or ethical dilemmas.

**5.2** Where an Accredited Mediator is subject to the Code of Professional Conduct, a party to a mediation who believes there has been a lack of compliance with this Code may activate the complaints and disciplinary procedures of the NABFAM member organisation under whose auspices the mediation took place.