SINGAPORE INTERNATIONAL MEDIATION INSTITUTE (SIMI) CODE OF PROFESSIONAL CONDUCT FOR SIMI MEDIATORS

Introduction

(a) Trust underpins the mediation process. If the parties do not trust a mediator's integrity in terms of competence diligence, neutrality, independence, impartiality, fairness and the ability to respect confidences, mediation is unlikely to succeed.

(b) The SIMI Code of Professional Conduct ("**Code**") provides SIMI Mediators with a concise statement of the ethical standards they are expected to meet.

(c) Users who believe the standards established in this Code have not been met may avail themselves of the SIMI Professional Conduct Assessment Process.

(d) All SIMI Mediators must subscribe to a code of conduct that governs their professional mediation practice and this code must be made known to users prior to accepting any appointment as a mediator. This Code will apply by default to any mediation that is mediated by a SIMI Mediator. A SIMI Mediator who subscribes to one or more other code of conduct may elect to have that other code apply and must inform the parties accordingly. Should a SIMI Mediator fail to inform parties of the applicable code of conduct for their mediation then this Code will be presumed to apply.

(e) This Code sets out the key principles that SIMI Mediators who adhere to it will have to abide by. These principles are vital to the mediation process and users of mediation services provided by SIMI Mediators are entitled to trust that SIMI Mediators adhere rigorously to the Code.

(f) 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.

(g) This Code may be adopted by any SIMI Mediator irrespective of nationality or professional background. This Code is inspired by and based on:

i. The IMI Code of Professional Conduct

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(h) SIMI wishes to express its gratitude and appreciation to the following organisations who had provided valuable feedback in the development of the Code:

i. Eagles Mediation & Community Centre
ii. Ministry of Law
iii. Ministry of Health Holdings
iv. Resolvers Pte Ltd
v. Singapore International Mediation Centre
vi. Singapore Mediation Centre
vii. State Courts: The Primary Dispute Resolution Centre
viii. The Intellectual Property Office of Singapore
ix. The International Mediation Institute

Definitions Used In This Code

The following is a list of definitions for commonly used terms in the Code.

(a) **Mediator / Mediation** - For the purposes of this Code, Mediation is defined as a process where two or more parties appoint a third-party neutral (the SIMI Mediator) to assist them in a dialogue oriented toward managing conflict or resolving a dispute or issue, which can also include negotiating agreements.

(b) **SIMI Mediator** – A SIMI Mediator refers to any mediator who is part of the SIMI Credentialing Scheme.

(c) **SIMI Credentialing Scheme** – This is the credentialing scheme offered by SIMI. There are four levels in the scheme: SIMI Accredited Mediator Level 1, SIMI Accredited Mediator Level 2, SIMI Accredited Mediator Level 3 and SIMI Certified Mediator.

The Code

1. Standards and Credentialing

1.1. SIMI Mediators shall ensure that they satisfy the respective requirements under the SIMI Credentialing Scheme before representing themselves as a SIMI Mediator.

1.2. SIMI Mediators should only accept assignments to act as a mediator for cases where they feel reasonably competent[1] to serve in that capacity.

[1] The determination of competency is a holistic one. It includes the possession of, or familiarity with technical and/or subject-specific knowledge that may be required for certain cases, as well as the

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1.3. SIMI Mediators are representatives of SIMI and as such, will refrain from participating in any activity or conduct that is, or may be perceived to be, unbecoming of a professional mediator or that is contradictory or inconsistent with SIMI's vision or mission.

2. Promotion of Mediation Practice

2.1. SIMI Mediators will present and promote their practice in a truthful and transparent manner that does not mislead or misrepresent any aspect of their expertise and/or experience.

2.2. SIMI Mediators will take reasonable steps to ensure that all publicised information relating to their mediation experience and/or expertise, is accurate to the best of their knowledge.

2.3. SIMI Mediators are fully responsible for ensuring that any information issued for the purpose of promoting their engagement as mediators complies with all applicable laws and regulations governing professional practice.

3. Appointment as Mediator

3.1. Before accepting an appointment as a mediator, SIMI Mediators will inform all parties to the mediation:

(a) of the SIMI Mediator's relevant background and experience;

(b) of the code of conduct observed by the SIMI Mediator;

(c) of the applicable process in the event that any party believes that the SIMI Mediator has not met the standards of the stated code of conduct;

(d) that the parties will be invited at the end of the mediation to offer written feedback on the mediation as well as on the SIMI Mediator's role; and

(e) if asked, whether the SIMI Mediator holds a professional indemnity liability insurance policy.

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mediator's general suitability for a case taking into account factors such as the mediator's experience level, and any conflicting interests.

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3.2. SIMI Mediators will not accept any appointment before first disclosing to the relevant parties, any information to the best of their knowledge that may, or may be perceived to:

(a) materially affect the SIMI Mediator's independence, neutrality or impartiality, or

(b) place the SIMI Mediator in a position where his or her interests conflict with any of the parties related to the mediation.

This obligation and duty to disclose will continue to apply throughout the entire mediation process.

3.3. Provided that a SIMI Mediator has reasonably disclosed any such information referred to in paragraph 3.2 above to the satisfaction of all relevant parties, the existence of said information will not be taken to deem the SIMI Mediator as being unfit to accept the appointment as a mediator for the parties.

3.4. Upon accepting an appointment as a mediator, a SIMI Mediator will take reasonable steps to ensure that they do not enter into any relationships that may create, or may be perceived to create, the appearance of a conflict of interest between the SIMI Mediator and any of the relevant parties to the mediation.

4. <u>Independence, Neutrality and Impartiality</u>

4.1. SIMI Mediators should act in an independent, neutral and impartial way. They shall act in an unbiased manner and treat all relevant parties to the mediation with fairness, equality and respect.

4.2. If at any time during a mediation a SIMI Mediator feels that he or she is no longer able to continue conducting the mediation in an independent, neutral and impartial manner, or if in continuing to do so the SIMI Mediator's interests will conflict with the interests of any of the relevant parties, the SIMI Mediator will as soon as reasonably possible, express that concern to all relevant parties and offer to withdraw from the mediation. SIMI Mediators may continue to act as a mediator only with the consent of all the parties to the mediation.

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5. Mediation Process

5.1. SIMI Mediators will ensure that they provide the highest professional standards of service in their appointed capacity as a mediator, before, during and after the mediation process.

5.2. SIMI Mediators will take reasonable steps to ensure that the parties to the mediation and their advisers (if any) understand:

(a) the characteristics of the mediation process to be used;

(b) their respective roles in the mediation;

(c) the role of the mediator; and

(d) the terms and conditions governing the mediation, including any obligations relating to confidentiality applicable to the parties, the outcome of the mediation and/or the SIMI Mediator.

5.3. SIMI Mediators will take reasonable steps to ensure that the parties consent to:

(a) the specific mediation process to be used, and

(b) the mediator(s) selected,

except where these have been already determined by any applicable law, rule of court or contractual obligation.

5.4. SIMI Mediators will ensure that all parties have equal opportunity to:

(a) raise their issues and be heard during the mediation, and

(b) where applicable, seek legal or other counsel prior to finalising any resolution or settlement.[2]

5.5. SIMI Mediators will ensure that all parties are aware that they may withdraw from the mediation at any time simply by informing the SIMI Mediator and the other party of their decision. Parties are not obliged to provide reasons to the SIMI Mediator in order to withdraw.

[2] This is not a mandatory requirement but to clarify that if one party wishes to seek advice from their legal counsel prior to finalizing a settlement, that the other party is also given an opportunity to do likewise.

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5.6. Where a SIMI Mediator engages in any private communication with one party, the SIMI Mediator will ensure that an equal opportunity will be provided to the other party to engage in private communication with the SIMI Mediator. The SIMI Mediator should ensure that both parties are aware of the fact that the SIMI Mediator is engaging in private communications with one or more of the parties. Such private communication may for example, take the form of holding private sessions during the course of mediation.

5.7. SIMI Mediators will take reasonable steps to prevent any conduct that may invalidate an agreement, or create or aggravate a hostile environment at the mediation.

5.8. SIMI Mediators will ensure that in the event the parties arrive at an agreement or settlement, that this is done voluntarily and with the consent of all parties.

5.9. SIMI Mediators should take steps to withdraw from a mediation if they determine in the course of the mediation that the mediation has assumed, or is likely to assume, an unconscionable or illegal character, or is likely to result in a settlement that is against public policy or be of an illegal nature.

5.10. With the consent of all parties, SIMI Mediators should draw on their expertise and experience to assist the parties in developing sustainable settlements during the mediation. However, SIMI Mediators should rigorously guard against prescribing solutions or offering any statement, suggestion, or value judgment which may create an undue influence on any one party towards accepting a specific outcome.

6. Fees

6.1. Prior to accepting an appointment, SIMI Mediators will 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). SIMI Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.

6.2. SIMI Mediators are not to suggest to parties that their fees should be based on or related to the outcome of the mediation.

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7. Confidentiality

7.1. SIMI Mediators are to keep strictly confidential at all times, and are not to disclose any information acquired in the course of serving as a mediator at a mediation unless:

(a) compelled by any law to make such disclosure;

(b) the SIMI Mediator has good reason to believe that disclosure is necessary to prevent death, serious physical harm or damage, or an illegal act;

(c) such disclosure is required in order to address a complaint made against the SIMI Mediator, or any other disciplinary proceedings in which the SIMI Mediator is involved in;

(d) the information is already in the public domain that was not otherwise a result of disclosure by the SIMI Mediator; or

(e) the parties have given express consent to such disclosure.

7.2. Notwithstanding paragraph 7.1, SIMI Mediators are allowed to disclose any other information about a mediation provided that the information:

(a) is sufficiently anonymised such that the parties cannot be identified;

(b) the specific details of the case are not disclosed; and

(c) the disclosure is for educational, research, record-keeping, auditing or verification purposes.

8. Acting as Advisor Post-Mediation

8.1. For a period of up to twelve (12) months following the end of a mediation, SIMI Mediators will not represent in any party from that mediation in an advisory capacity, 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.

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8.2. Except insofar as the information is no longer confidential or if the party protected by the confidentiality gives consent or otherwise provided for by law, at no time following the end of a mediation will SIMI 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.

8.3. At all times, SIMI Mediators are to ensure that they do not act in a manner that can be reasonably perceived as being an exploitation of the SIMI Mediator's role in a mediation, for the SIMI Mediator's personal, material or financial advantage.

9. Assessment of Adherence to Code of Conduct

9.1. Where any party to the mediation believes that there has been a lack of compliance with this Code, the SIMI Mediator who is acting as a mediator for that party will promptly direct and guide them through the "SIMI Professional Conduct Assessment Process", which is also available on SIMI's website (www.simi.org.sg).

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