

RSPO DISPUTE SETTLEMENT FACILITY (DSF)

DSF Mediator Code of Professional Conduct (Effective from 7th March 2019)

This Code of Professional Conduct ('the Code') applies to any person acting as a mediator under the auspices of the RSPO Dispute Settlement Facility ('DSF Mediator') in relation to efforts to resolve a dispute or difference between the parties to a complaint lodged with the RSPO ('the Complaint'). The Code presents a statement of the ethical standards that parties¹ can expect from DSF Mediators.

The Code is consistent with international good practice². Users who believe the standards established in the Code have not been met can report to the DSF Manager.

1 DEFINITIONS

1.1 For the purposes of this Code, **DSF Mediation** is defined as a process in which a third party, the DSF Mediator, will assist parties engage in collaborative means oriented towards managing or resolving a dispute. DSF Mediation may include, but is not limited to employing techniques of mediation, consensus-building, capacity building, dialogue facilitation and joint fact-finding.

1.2 A **DSF Mediator** ('Mediator') is one:

- whose competency in the practice of dispute resolution and mediation has been established
- who is authorised by the DSF to manage a DSF Mediation process ('the Process').

2 APPOINTMENT and COMPETENCE

2.1 DSF Mediators will present their practice accurately and truthfully. They possess the necessary competence and knowledge about the Process to deal with the issues in the Complaint, based on their training and practice in the necessary skills.

2.2 DSF Mediators commit to preparing properly for and conducting the Process efficiently.

2.2 DSF Mediators will not accept an appointment if any pre-existing relationship or interest in the subject matter of the dispute creates a real or perceived conflict of interest. The DSF Mediator will disclose any such interest to the DSF and, depending on the nature of that interest, may seek and obtain the parties' consent to continue. Regardless of party consent, if the DSF Mediator

¹ In a DSF process 'the parties' refers to the complainant(s) and the RSPO member against which the complaint has been lodged

² The Code is inspired by:

- a) Code of Professional Conduct of the International Mediation Institute 2017
- b) Code of Conduct for Third Party Neutrals, Centre for Effective Dispute Resolution (CEDR) 2017
- c) Village Mediator Code of Conduct, Paralegal Advisory Services (PASI) 2011

considers the relationship or interests poses any measure of risk to the DSF Mediator's ability to manage the Process impartially, the DSF Mediator will decline the appointment.

2.3 At first meeting, DSF Mediators will describe their relevant background and experience to the parties.

3 SELF-DETERMINATION of the PARTIES

3.1 DSF Mediators will ensure that parties understand:

- the voluntary nature of their participation in a DSF Mediation process
- that any Settlement will be signed of their free will
- that the DSF Mediator will not impose judgement, or coerce the parties into a decision.

4 IMPARTIALITY

4.1 DSF Mediators will conduct the Process in an impartial manner, avoiding bias or prejudice in favour of any party. If at any time a DSF Mediator feels unable to conduct the Process in such a manner, s/he will express that concern to DSF and, if appropriate, to the parties and withdraw from the DSF Mediation.

4.2 The duty to disclose actual, potential or perceived threats to mediator impartiality is continuous. Any newly discovered interests or relationships creating an actual, potential or perceived threat to mediator impartiality must be disclosed and parties must renew their consent to proceed with the process.

4.3 Following any such disclosure, if any party should raise an objection, the DSF Mediator will withdraw from the Process.

4.4 After their appointment, and until the DSF Mediation concludes, DSF 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, potential or perceived threat to mediation impartiality. In cases of perceived threats, Mediators may proceed after full disclosure and party consent.

4.5 Within 12 months of the conclusion of a DSF Mediation, DSF Mediators will not represent in an advisory capacity or accept employment with any party to the Process in the same or substantially related matter, unless all parties to the Process expressly consent to that representation after full disclosure. Acting as a mediator, or in any other neutral capacity such as arbitrator, in other dispute resolution proceedings 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.

5 DSF PROCESS

Conduct of the Process

5.1 As *de facto* Process Manager, a DSF Mediator may employ, utilise, recommend or support a range of techniques such as: facilitation, information sharing, joint fact-finding, consensus building, dialogue and negotiation capacity building and mediation.

5.2 DSF Mediators will endeavour to ensure that the parties to the Process and their advisers understand:

- the role of the Mediator as *de facto* Process Manager
- characteristics of the DSF Process, in particular its flexibility
- their roles as parties and advisers
- the roles of any other members of the DSF team
- self-determination of the parties in all respects of the Process
- importance of respecting confidentiality as agreed by the parties
- key principles of the Code, in particular party obligations to respect Mediator confidentiality
- terms governing the Process which will be captured in a Process Agreement
- the enforceability of any resulting Settlement.

5.3 The DSF Mediator will observe all the terms of the Process Agreement, especially with regard to confidentiality, and will manage the Process consistent with the DSF Procedures as set out in the DSF Terms of Reference³.

5.4 In the interests of confidentiality and flexibility, DSF Mediators will not permit any visual, written or sound recording of the meetings unless there is good reason and consent by all the parties such that they and their constituency will all benefit.

5.5 With the agreement of the parties, key action points may be noted and signed by the parties. The DSF Mediator will ensure that the signatories acknowledge that by signing they understand and commit to the terms.

5.6 Where there is resolution during the Process, the DSF Mediator will work with the parties to record any agreement in signed writing and ensure that the signatories acknowledge that by signing they accept and understand the terms of that agreement. Such agreements may be interim agreements or they may constitute a Framework Agreement or the final Settlement Agreement.

Fairness and integrity of the DSF Process

5.7 The DSF Mediator must satisfy him/herself that the parties consent to the Process being used.

5.8 DSF Mediators will ensure that all parties are aware that they have equal opportunity to engage in bilateral communications with the DSF Mediator and that the DSF Mediator will respect the confidential nature of those communications.

5.9 DSF Mediators will conduct the Process with attention to procedural fairness to all parties. The DSF 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 advice before finalising a Settlement.

³ DSF Framework, Principles and Terms of Reference (2019)

5.10 DSF Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement, or create a hostile environment. DSF Mediators will endeavour to ensure that parties have reached agreement of their own volition and knowingly consent to the terms.

Termination of the Process

5.11 The DSF Mediator will ensure the parties understand that they may withdraw from the Process at any time by informing the DSF Mediator of their decision and confirming in writing to that effect.

5.12 The DSF Mediator undertakes not to prolong the Process unnecessarily where there is, in the DSF Mediator's opinion, no reasonable likelihood of progress being made towards settlement.

5.13 The DSF Mediator may terminate the process if any of the parties is acting in material breach of the Process Agreement.

5.14 The DSF Mediator will withdraw from a Process if discussions among the parties appear 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 cultural or legal norms of fairness.

6 CONFIDENTIALITY AND DISCLOSURE

6.1 While respecting the tenets of transparency and disclosure described in the DSF Terms of Reference⁴, DSF Mediators are also bound by strict measures of Confidentiality.

6.2 DSF Mediators will disclose having previously served as mediator, whether DSF-appointed or other, in a dispute resolution or mediation process involving one or more of the parties, provided none of the details of that case are disclosed.

6.3 DSF Mediators will treat information with discretion and not disclose information improperly.

6.4 Throughout the Process, DSF Mediators will discuss and explain confidentiality with the parties and obtain their consent to any communication or practice by the DSF Mediator that involves disclosure of any information.

6.5 DSF Mediators will respect parties' requests for confidentiality, including their identities.

6.6 DSF Mediators will keep confidential all information acquired in the course of serving as DSF Mediator in a DSF Process unless:

- compelled to make a disclosure by law or by a governmental agency having appropriate authority and jurisdiction
- the same information enters the public domain whether by the parties or others

⁴ DFS Framework, Principles and Terms of Reference (2019)

- the parties release the DSF Mediator from the confidentiality restriction
- disclosure is necessary to prevent harm to an identifiable third party, or to prevent the commission of illegal and unconscionable acts. Before making such disclosure, DSF Mediators should make a good faith effort to encourage the party(ies) or other advisers or representatives to act in such a way that would remedy the situation.

6.7 DSF Mediators will repeatedly revisit the matter of confidentiality to ensure parties' full understanding of the DSF Mediator's obligations under this Code and their own obligations under the Process Agreement.

6.8 At no time following the DSF Process will DSF Mediators adduce evidence or testify on behalf of any party in making or defending a claim against the other party on the matter of the same complaint. The only exception to this is where the information is no longer confidential, or where the party protected by the confidentiality gives consent.

6.9 DSF Mediators will ensure that the DSF local field team, including administrative staff, understand the tenets of DSF Confidentiality provisions and sign a DSF Confidentiality and Neutrality Agreement.

7 HUMAN RIGHTS

7.1 DSF Mediators are respectful of international covenants on human rights and bound to the DSF Principles embedded in the DSF Framework, Principles and Terms of Reference 2019.

7.2 DSF Mediators will make every effort to ensure representation of diverse sectors with regard to age, gender, interests and other factors which may be revealed in the local or complaint context. They will look for opportunities to build capacity of the broader community to participate actively in the Process. They will encourage women and families to attend public meetings.

7.3 DSF Mediators have a duty of care to ask the parties from the outset of the Process if a Settlement will impact on others who are not participating in the Process. This is particularly important if a Settlement may have an influence over the well-being of children or any other vulnerable populations.

8 REMUNERATION

8.1 A DSF Mediator's fees and expenses are paid in their entirety through the RSPO DSF. Under no circumstances is a DSF Mediator permitted to accept any other remuneration or gift from the parties or stakeholders or any other individual or entity related to the DSF complaint which is subject of the Process.

DSF Mediator undertaking:

I agree to abide by the provisions of this Code of Professional Conduct in my capacity as DSF appointed Mediator. If, at any time, I find I am unable to maintain this obligation I undertake to inform the DSF Manager of the fact and withdraw immediately from the particular Process.



Mediator name

Mediator signature

Date

DSF

Date