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**ANNEX A****GLOSSARY OF TERMS****ADJUDICATION**

Adjudication describes any form of formal dispute resolution process in which the parties litigate cases through the presentation of evidence and argument to a neutral third party who has the power to render binding decisions based on objective standards, rules, or laws. Adjudication is used in many forums – judicial (courts), administrative (tribunals), and arbitral (boards of arbitration). Adjudicative processes are rights-based and positional.

**ALTERNATIVE DISPUTE RESOLUTION (ADR)**

ADR is a widely used term referring to the entire range of dispute resolution options outside the traditional administrative, judicial or legislative decision-making process.

**ARBITRATION**

Arbitration is an adjudicative form of dispute resolution involving a mutually acceptable neutral third party (arbitrator) empowered to make a decision on the merits after an informal hearing that usually includes presentation of evidence and oral argument. Arbitral decisions are generally binding and subject to limited judicial review. In exceptional cases, decisions are treated as non-binding and the right to proceed to trial is preserved. Arbitration may be voluntary (by private agreement) or compulsory (by legislation or through a public court-annexed program). Instead of a single arbitrator, a panel (generally a tripartite board) may be used. Final offer selection is a version of arbitration where the arbitrator chooses between “best offers” submitted by parties. Arbitration is widely used for labor relations and commercial disputes.

**CAUCUS**

A private session between the mediator and any one party in which the mediator explores the issues involved in the case and the options available to the parties to resolve the matter. If the mediator meets separately with one party, the mediator will almost always then meet separately with the other parties to the mediation.

**COMPROMISE AGREEMENT**

The settlement of a dispute by mutual concession. When approved by the court, the compromise agreement will have the force and effect of a court decision. As such, the compromise agreement may be enforced by the court through execution of judgment.

**CONCILIATION**

Conciliation is a process in which a neutral third party (conciliator) conveys information between parties and attempts to improve direct communication between them. The conciliator often prepares a report that describes the scope of agreement and disagreement. The role of a conciliator is more passive than a mediator. Conciliation is most often used in collective bargaining disputes.

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## CONFLICT

Conflict is usually based upon a difference over goals, objectives, or expectations between individuals or groups. Conflict also occurs when two or more people, or groups, compete over limited resources and/or perceived, or actual, incompatible goals.

## CONFLICT RESOLUTION

A process of resolving a dispute or disagreement

## CONSENSUS

A mutually acceptable agreement that takes into consideration the interests of all concerned parties. An agreement reached through consensus may not satisfy each participant's interests equally or receive a similar level of support from all participants.

## COURT-ANNEXED MEDIATION

Court-annexed mediation is a voluntary process wherein the court may advise parties to submit their case for mediation so that they may be assisted by neutral party to facilitate their discussions or negotiations towards a workable solution to the problem. The parties maintain their rights to proceed to trial if mediation fails. Any settlement that is reached becomes a judgment of the court.

## EARLY NEUTRAL EVALUATION

Early Neutral Evaluation (ENE) is a non-binding process in which parties present legal and factual positions to a neutral third party who provides an objective assessment that is used to encourage settlement. The neutral is often a judge or a person with substantive expertise. ENE may be a step in a mediation process. If no settlement is reached, the neutral may make recommendations to the parties regarding the course of litigation. ENE is generally used when parties are divided over the legal implications of a case.

## FACILITATION

Facilitation is a non-binding process in which a neutral third party (facilitator) manages the discussion between parties that are attempting to reconcile divergent views and reach agreement on issues or tasks. Facilitation is used in a wide variety of settings including management meetings and public consultations.

## FACT-FINDING

Fact-finding is a process by which facts relevant to a controversy are determined by a designated person and a resolution of issues recommended or determined. Parties decide in advance to treat the results as conclusive or advisory. If advisory, fact-finding is sometimes referred to as "non-binding arbitration." The fact-finder may be a neutral third party or an expert in a relevant field. The fact-finder may be jointly selected by parties or provided by a public body. Fact-finding may be used as part of a broader dispute resolution process such as negotiation, mediation, or arbitration. It is often used to gather information regarding public sector collective agreements and to address scientific or technical issues.

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## LITIGATION

Litigation is a formal, rights-based adjudicative process that depends on each party advancing positions, presenting evidence, and making arguments before a neutral third party decision-maker. Litigation is used in trials and hearings.

## MEDIATION

Mediation is a process of assisted negotiation that relies on a neutral third party (mediator) to help parties reach a mutually agreeable resolution. Participation by the parties may be voluntary (by private agreement) or mandatory (through a public program such as court-annexed mediation). Whether attendance is voluntary or mandatory, settlements are consensual; the mediator has no authority to impose a result. Settlements reached through mediation are binding upon the parties. Forms of mediation include evaluative, problem-solving, facilitative, transformative, and therapeutic.

## MEDIATION/ARBITRATION (MED/ARB)

Med/arb is a process in which parties agree that mediation will be followed by arbitration of unresolved issues. In med/arb the same neutral third party generally performs both roles. Med/arb is becoming increasingly popular in the labor relations area. The reverse (Arb/Med) is also used in some circumstances.

## MEDIATION CONFERENCE

A discussion among the disputing parties, their counsel, and the mediator, to explore options for settling a dispute.

## MEDIATOR

Mediators are trained individuals who will attempt to assist the parties to reach a mutually acceptable resolution of their dispute.

## MINI-TRIAL

A mini-trial is a flexible, two-stage process in which counsel presents a summary version of each case to business representatives of each side who then attempt to negotiate a settlement. A neutral third party may facilitate the information exchange. The neutral third party may also mediate during the settlement negotiations and may provide an advisory opinion on the potential court outcome.

## NEGOTIATION

Negotiation is a process in which parties communicate directly or indirectly for the purpose of reaching an agreement. Approaches to negotiation include competitive, cooperative, and integrative. Negotiation may be based on power, rights, or interests. Negotiation may be conducted by parties themselves or by agents (Prepared by Leslie H. Macleod & Associates, 2004).

## PRE –TRIAL CONFERENCE

In civil procedure, a conference held after the pleadings have been filed and before the trial begins, for the purpose of bringing the parties together to outline discovery proceedings and define the issues to be tried. Courts often use the pre-trial conference as an opportunity to encourage settlement.