MEMORANDUM OF UNDERSTANDING

Draft 12 – 2017-11-06

THIS IS A DRAFT PROVIDED BY THE MOU TASKFORCE TO THE PRT FOR A LAST OPPORTUNITY FOR INPUT to the MOU TF. The MOU TF will gather input until November 23. The final meeting of the MOU TF is November 30 after which a draft will be developed by the MOU TF and provided to the PRT by December 15, 2017. This will conclude the mandate of the MOU TF.

THIS DRAFT INCORPORATES INPUT COLLECTED TO DATE BY THE MOU TASK FORCE, INCLUDING DISCUSSION AT THE ADRIC 2017 CONFERENCE (The Workshops and input to Wendy Hassen at the ADRIC Board meeting.) THE MOU REMAINS A WORK IN PROGRESS AND THIS DRAFT DOES NOT REFLECT CONSENSUS OF THE MOU TASKFORCE OR THE PRT ON ANY OR ALL PROVISIONS.

This latest draft has been developed by Kathryn Munn and Wendy Hassen, MOU TaskforceCo-Chairs who have included comment boxes to provide references for certain draft provisions or to highlight key areas where further discussion\exploration is required.

ADRIA General Comment: The committee has served us well and presented a comprehensive document. You have captured all the relevant issues Clearly there are a number of areas requiring further review and discussion. There is also some "wordsmithing" necessary. However, overall the MOU captures, to the extent possible at this time, the most essential features of an MOU.

WHEREAS ADRIC and the Affiliates enter into this Memorandum of Understanding ('MOU') to establish a framework with a view of continuing and strengthening their relationship with each other;

Commented [WH1]: Preamble including first paragraph from IMAQ MOU

AND WHEREAS the parties acknowledge that ADRIC and the Affiliates are a Federation, as that term is defined in this MOU, of eight interdependent organizations;

NOW THEREFORE, in consideration of the premises and the covenants and conditions herein contained, the parties agree as follows:

1. BACKGROUND:

FOR DISCUSSION

While ADRIC and the seven (7) ADR Regions are separate organizations, they have a joint, collaborative history and are structurally tied together. In 1974, the Arbitrator's Institute of Canada Inc. (AIC) based in Ontario was formed. Its goal was to act as a national center of information, education and research on arbitration and mediation. Separate Regional organizations (whose members were also Mediators and Arbitrators) soon started forming: Quebec (1977), BC (1980) and Alberta (1982). Discussions between national and regional leaders led to the creation of the Arbitration and Mediation Institute (AMIC) in 1984. The new AMIC Board consisted of one (1) representative from each region. Regions agreed to collect a fee from their members to fund the national organization. As part of this, AMIC Ontario was created to function as a separate organization (Ontario was previously served by AIC). Additional Regional organizations developed in Saskatchewan (1987), Manitoba (1989) and Nova Scotia, which became the Atlantic Region. In 1996, the first Memoranda between AMIC and each Region were signed, to "clarify their relationship and provide consistent integration". In 1994, a separate organization of Canadian corporations and law firms had formed the Canadian Foundation for Dispute Resolution (CFDR) to promote creative resolution of business disputes (through the use of ADR). Leaders of AMIC and CFDR later agreed to consolidate the two (2) organizations, which became the ADR Institute of Canada in August 2000. The goal of this union was to provide a forum to integrate ADR professionals with ADR users, combine resources to increase the profile and ability to promote ADR across the country and to provide greater ability to represent its members as the professional organization for ADR practitioners in Canada.

FOR DISCUSSION

ADRIA: This section includes the year for all affiliate entries with the exception of Nova Scotia/Atlantic and AMIC Ontario. These should be added to complete the picture.

2. PURPOSE:

Commented [WH2]: This found general consensus in PRT consultations in 2016

The Parties to this MOU share the following objectives:

- Increase the understanding and use of ADR by the public, business, academia and government;

  ADRIA: Change to read: Increase the understanding acceptance and use of ADR by members of the public, business, academia and government;

- Ensure excellence and quality in the practice of ADR, including expansion of the recognition and use of ADR professional designations;

  ADRIA - maybe change to read "Ensure competency in the practice of ADR".

- Provide excellent services to our members.

3. GUIDING PRINCIPLES:

Commented [WH3]: This found general consensus in PRT consultations in 2016

National Scope: We are interdependent organizations. We work together within a national Federation framework to achieve our objectives across Canada.

Diversity: We value our diversity. We recognize our uniqueness, including variations in nature, size, finances and other resources, geography, business focus, language and kinds of members represented.

Collaboration: Collaboration is our strength. We look for creative ways to collaborate to achieve our objectives. We leverage our strengths, rather than duplicating our efforts. We avoid actual or perceived competition with one another. We provide consistent, unified and complementary messages to our members, their clients and the public.

Transparency: We communicate openly and honestly. We share information willingly. We are committed to fully and consistently consulting one another on matters of mutual interest and in everything we do where our decisions may affect each other.

ADRIA: delete the words "everything we do" – theyr are excessive and unnecessary.

Commented [K4]: MOU TF Sept 19, 2017 - intended to strengthen the concept of communication- the need for good communication between Federation members has become evident throughout the MOU development process.

Mutual Accountability: We are clear about our distinct roles and responsibilities. We create sound and effective structures (including this MOU) and processes to frame and build our relationships. We support each other. We honour our commitments to each other. We use appropriate methods to prevent, manage and resolve issues among ourselves.

RESPECT – We respect our differences and our autonomy within our Federation. We see the worth of each other.

4. DEFINITIONS

4.1. **ADR:** ADR refers to a spectrum of dispute resolution processes that provide a means for parties to resolve their dispute ~~short of~~ without litigation, including but not limited to negotiation, mediation and arbitration~~, each of which may involve the assistance of a third party neutral to help parties resolve their dispute~~.

4.2. **Member** has the meaning ascribed by each of the Affiliates and ADRIC in reference to a member who is an individual person, not including a corporation or group.

~~4.1.1.~~4.2.1. Corporate Member has the meaning ascribed by ADRIC.

Commented [KM5]: ADRIC 2017 conference - Suggested change to broaden the intended meaning of ADR without limiting it to a few named processes.

Commented [KM6]: October 2017 – Changes based on comments received

Commented [KM7]: Should full member be defined here? (Applicable to section

Commented [KM8]: October 2017 – Question: Should the definition include corporate members as defined by affiliates?

Commented [KM9]: ADRIC 2017 conference – The MOU needs to distinguish clearly between individual members and corporate members.
Also in this draft in order to clarify the use of the term "members", the references to "Federation members" have been changed to "parties to this MOU".

FOR DISCUSSION

4.2.4.3. **ADRIC** is a national non-profit organization that provides national leadership in the development and promotion of arbitration, mediation and other ADR services in Canada and Internationally. ADRIC represents and supports its members, including users of ADR services. Affiliates and corporate members have representation on the ADRIC Board of Directors ADRIC takes a leading stewardship role to support successful achievement of the Federation's common objectives and in setting national standards.

Commented [WH10]: This sentence is based on the IMAQ MOU 1(b)

4.3.4.4. **Affiliates** are regional not for profit organizations engaged in the development and promotion of arbitration, mediation and other ADR services for their members in the regional jurisdictions as identified below:

Commented [KM11]: October 2017 – Should the MOU state that Affiliates may not accept members from outside the geographic regions listed? If so is it the geographic location of the member's primary residence, office, or other, that determines the geographic region?

AFFILIATE	GEOGRAPHIC REGION
ADR Atlantic Institute (ADRAI);	Provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland & Labrador
ADR Institute of Alberta (ADRIA);	Province of Alberta, Northwest Territories
ADR Institute of British Columbia (ADRBC);	Province of British Columbia, Yukon Territory
ADR Institute of Manitoba (ADRIM);	Province of Manitoba
ADR Institute of Ontario (ADRIO);	Province of Ontario, Members located in Nunavut who want services in English
Institut de médiation et d'arbitrage du Québec (IMAQ)	Province of Québec, Members located in Nunavut who want services in French
ADR Institute of Saskatchewan Inc. (ADRSK);	Province of Saskatchewan

ADRIA – We would be more *ore comfortable with a chart that suggests IMAQ will provide French language services and support to any member in any province or territory that does not feel adequately supported as a Francophone in their region, as opposed to limiting this provision to Nunavut.*

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4.4.4.5. **Federation** means the group consisting of ADRIC and the 7 Affiliates.

Commented [WH12]: The Term Federation was extensively discussed at the July 12 2017 PRT meeting and was the preferred term to refer to all members of the MOU

4.6. ADRIC National Courses means the ADRIC program, if any, of basic courses which are provided as an option to qualify members for ADRIC designations;

FOR DISCUSSION

4.5.4.7. National Course Accreditation means the ADRIC program, if any, in which courses by third-party providers are pre-approved to qualify members for ADRIC designations.

Commented [KM13]: October 2017 – Input suggested these terms be defined.

5. RELATIONSHIPS

5.1. Governance

5.1.1. ADRIC's Bylaws and this MOU, both of which may be amended from time to time, set out terms, conditions and obligations that define the relationship between the parties. It is agreed that the ADRIC Bylaws, and any amendment thereto, as well as this MOU do not and cannot impose any unreasonable constraint upon the Affiliates' authority to carry out their respective missions and objectives.

Commented [WH14]: From IMAQ MOU

ADRIA: Delete the word " unreasonable"

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5.1.2. None of the parties to this MOUs ~~of this group~~ has authority to control the actions of any other member or members of ~~this group~~the Federation except as specifically described in this MOU or in the Bylaws of ADRIC.

Commented [KM15]: Based on input received at ADRIC 2017 conference

5.1.3. For those matters within the exclusive jurisdiction of ADRIC, ADRIC's By-laws shall prevail and for those matters within the exclusive jurisdiction of the Affiliates, the Affiliates' By-laws shall prevail. All parties to this MOU agree that the application of their Bylaws shall not be in contradiction with the provisions of this MOU. If a Federation member identifies such a contradiction with their Bylaws, they shall inform all other Federation members and engage in discussion about modifications that will resolve the contradiction.

Commented [K16]: From PRT discussion July 12, 2017

ADRIA : The final two sentences should read:

"All parties to this MOU agree to apply their respective bylaws in a manner that is consistent with this MOU and shall strive to resolve any inconsistencies between their respective bylaws and this MOU".

FOR DISCUSSION

Comment: Regarding these provisions, the only sentence that needs to be in the MOU is that neither ADRIC nor the Affiliates will allow any by-laws to stand or be enacted which are inconsistent with the terms of the MOU. We are not comfortable with the provisions creating paramountcy to ADRIC by-laws. If one affiliate has a by-law that needs to be changed it does not need to notify all affiliates- just ADRIC and any Affiliates who may be affected by the change in the by-law

5.1.4. Subject to the terms of this MOU, Affiliates have the right within their respective regional areas, to:

5.1.4.1. manage their affairs, conduct any matters of business with any person, government or organization;

5.1.4.2. deal with their members in all matters of membership, professional designations, education, maintenance of standards and discipline;

ADRIA: change to read deal directly with their members in all matters of membership, professional designations, education, maintenance of standards, and discipline (in concert with ADRIC where appropriate or required)

5.1.4.3. engage in any activity which will enable the Affiliates to meet their goals and objectives.

ADRIA: Change wording to: engage in any activity which will enable the Affiliate to meet their goals and objectives (without compromising the success of any other Federation member, individually or collectively)

FOR DISCUSSION

5.1.5. ADRIC will respect each Affiliate's governance structure; each Affiliate will respect ADRIC's and all other Affiliates' governance structures.

5.1.6. In the interests of improving collaboration and communications between ADRIC and each Affiliate, each Affiliate commits to ensure that its representative on the ADRIC Board will be authorized to speak for the Affiliate at the ADRIC Board level on matters affecting the Affiliate.

Commented [WH17]: Taken from IMAQ agreement 5(e) plus incorporates PRT comments July12, 2017

5.1.7. There is an expectation that an Affiliate representative on the ADRIC Board will work for the benefit of the national organization, while also advancing any relevant regional perspectives.

Commented [WH18]: This is based on the IMAQ agreement 5(f) plus incorporates PRT comments July 12, 2017

ADRIA: Change wording: There is an expectation that an Affiliate representative on the ADRIC Board will work for the benefit of the national ~~organization~~ Federation as a whole, while also remaining connected to the Affiliate and advancing any regional perspectives put forward.
["national organization" could be construed as ADRIC, which is not the intent]

5.1.8. Upon being informed by the Affiliate, ADRIC will give effect to the decisions of each Affiliate concerning the election to or removal from office of the Affiliate's representative on the ADRIC Board.

Commented [KM19]: ADRIC 2017 conference - ADRIC supports making necessary changes to the ADRIC Bylaws to address Affiliate elected members coming on to the Board when they are elected or to honour Affiliate decisions should an ADRIC rep be removed from the Board mid-term.

5.2. Roles and Responsibilities

Where service or effort duplication is identified, ADRIC and the Affiliates will work together to explore service delivery options that would most effectively use time and resources to the mutual benefit of ADRIC and the Affiliates and their members.

5.2.1. Affiliate Obligations to ADRIC

5.2.1.1. Collaborate with ADRIC to promote ADR across Canada, and support its members;

5.2.1.2. Incorporate as a not for profit entity with objectives that do not conflict with ADRIC;

FOR DISCUSSION

5.2.1.3. Maintain a functioning organization capable of providing services to and representation of its members;

5.2.1.4. Participate in ADRIC governance in accordance with ADRIC bylaws;

5.2.1.5. Manage its affairs and members and address issues with members at the regional level in coordination with ADRIC as appropriate;

5.2.1.6. Provide input into the national standards and code of conduct for ADRIC designations;

5.2.1.7. Facilitate and receive applications for national designations and recommend granting of designations to ADRIC;

5.2.1.8. Require all full members residing in the region to be members of ADRIC and collect and forward membership fees for ADRIC;

5.2.1.9. Provide a pathway to ADRIC membership for Affiliate members who are not full members

ADRIA: Change wording to read: Provide a pathway to ADRIC membership for Affiliate members who are not ~~full members~~ otherwise eligible for a full Affiliate membership. *[as originally drafted, this clause implied that Alberta & BC would have to offer ADRIC membership to its Associate members, which is not the desired outcome]*

Commented [KM20]: ADRIC 2017 conference – In addition there was discussion about the need to address the issue of non-Canadian individual membership and Honorary membership

~~5.2.1.9.~~

5.2.1.10. Work with ADRIC to ensure the mutual success of ADRIC led programs and operations, including supporting national activities, conferences and projects to advance ADR and members in their regions, as may be necessary, operationally feasible and appropriate;

ADRIA – change wording to read:

Work with ADRIC to ensure the mutual success of ADRIC-led programs and operations, including support to national activities, membership benefits, conferences and projects to advance ADR …..

~~5.2.1.10.~~

5.2.1.11. Consider the ADRIC strategic plan in the Affiliates' planning process;

5.2.1.12. Support ADRIC's national and international activities;

5.2.1.13. Adopt the ADRIC branding and ensure their marketing is consistent with that branding.

FOR DISCUSSION

5.2.2. ADRIC Obligations to Each Affiliate

ADRIC will at all times:

ADRIA : ADRIC's overarching obligation should be to collaborate with the Affiliates in order to promote ADR Across Canada. This is missing and needs to be added as the first item:

Collaborate with the other Affiliates to promote ADR across Canada".

5.2.2.1. Recognize the Affiliate as the official representative of ADRIC in the region;

5.2.2.2. Facilitate the Affiliate's participation in ADRIC governance, including in the development of an ADRIC strategic plan;

~~5.2.2.2.~~5.2.2.3. Provide guidance and assistance to support the Affiliate's programs as may be necessary, operationally feasible and appropriate;

~~5.2.2.3.~~5.2.2.4. Support the Affiliate with opportunities to share information and best practices,.;

5.2.2.5. Set, review and revise national standards for attaining and retaining professional designations in consultation with all Affiliates;
ADRIA: Change wording to read: Set, review and revise national minimum standards for attaining and retaining professional designations …..

~~5.2.2.4.~~5.2.2.6. Demonstrate accountability to the Affiliates on commitments it has made to Affiliates including complying with operational agreements between ADRIC and one or more Affiliates;

~~5.2.2.5.~~5.2.2.7. Support the Affiliate's regional activities;

~~5.2.2.6.~~5.2.2.8. Develop and implement national initiatives and programs consistent with ADRIC's strategic plan;

Commented [WH21]: The Question has been raised: What does "representative" mean - There is some concern this means that Affiliates can make decisions and speak for ADRIC – What is the role of the Affiliate? Dual communications to members has been highlighted as confusing and contradictory at times – input suggests we need to do a better job in this area

Commented [WH22]: Does the Affiliate representative on the ADRIC Board represent the Affiliate input on strategic planning or does ADRIC need to consult with the Affiliates in another way or both? How should Affiliates and ADRIC engage with one another in their respective strategic planning processes?

FOR DISCUSSION

~~5.2.2.7.~~5.2.2.9. Work with each Affiliate to ensure the mutual success of Affiliate-led programs and operations;

~~5.2.2.8.~~5.2.2.10. Maintain a functioning organization capable of providing services and support to Affiliates;

5.2.3. Affiliate Obligations to Other Affiliates

5.2.3.1. Share information and best practices with one another to enhance ADR practice and initiatives across the country, and the use and understanding of ADR by the public in Canada;

5.2.3.2. Share information where that would be important to another Affiliate or its members in another region;

5.2.3.3. Work with other Affiliates to address applications for membership, transfer of membership, or dual membership in a way that maintains the credibility of membership, ensures support for discipline of members by an Affiliate, and facilitates member mobility from region to region.

5.2.4. Sharing of Services

ADRIC and any the Affiliates may enter into agreements to share or purchase services from each other. Such agreements will in all cases be open and transparent between all Affiliates and ADRIC with clear accountabilities.

6. DESIGNATIONS

6.1. National designations in ADR are recognized as foundational to ADRIC and the Affiliates in their integrated role as the professional association for mediators, arbitrators and other ADR practitioners. Promoting and maintaining designations creates a high standard of excellence in ADR professions and is a primary responsibility in serving the needs of our members.

6.2. Affiliates agree to collaborate with ADRIC to develop, promote and administer national designations established by ADRIC. ADRIC and the Affiliates will ensure that processes and the parties' respective roles for designation promotion, approval, and maintenance are clear and understood, including:

- Designation application

Commented [WH23]: More discussion is needed regarding how this can be implemented. Some suggest that for this to effectively happen: ADRIC must: commit resources, financially and otherwise; layout clear promotional plans and cooperating projects with Affiliates and that this also applies to ADRIC national courses.

FOR DISCUSSION

- Designation standards
- Designation renewal
- Complaints and discipline
- Application and renewal fees

6.3. As a reference for all the parties, a written framework outlining designation administration will be developed and updated as necessary, by the parties to this MOU.

6.4 Nothing in the foregoing shall be deemed to preclude any Affiliate from:

(a) Implementing and promoting other ADR designations that are not in conflict with the ADRIC ADR designation; and

(b) Requiring an applicant for an ADRIC designation to meet additional standards to qualify for the ADRIC standard.

6.5 No Affiliate shall refuse to recognize the ADRIC designations granted to a member of ADRIC or another Affiliate for reason that the member was not required to meet the additional standards referred to in paragraph 6.4(b)

ADRIA : 6.5 will create issues down the road should one affiliate require a higher standard of practice relative to achieving a designation. For example, if ADRIA invokes a higher standard what's to stop Alberta residents from becoming a member of the BC affiliate, getting their designation through the BC Affiliate and then joining ADRIA?

Commented [KM24]: ADRIC 2017 conference – We need greater clarity about the meaning of consistent designation standards. One suggestion was each Affiliate having a seat on the ADRIC Education Committee. Another comment was that there needs to be recognition that some training may be unique to each jurisdiction – for example the regulatory framework may be different in different jurisdictions. Is it sufficient to deal with this in the framework described in 6.3?

Commented [KM25]: Changes to clarify meaning.

Commented [K26]: This is an area that needs more discussion because of diverging perspectives. Another perspective: "Any designation that isn't "National" competes with ADRIC's brand and dilutes the entire premise of designations. " Yet another perspective is to allow existing affiliate designations, "grandfathering", but no new affiliate-only designations going forward.
For Affiliate designations, there needs to be a provision that the Affiliate designations must be recognized by all other Affiliates and ADRIC.

FOR DISCUSSION

7. EDUCATION AND TRAINING FOR PROFESSIONAL MEMBERS

ADRIC and the Affiliates support the highest quality of education and training for their members. It is recognized that engagement in delivery of education varies between Affiliates and this MOU does not impose any requirement for an Affiliate or ADRIC to provide or refrain from providing education or training.

7.1. National ADRIC Courses:

7.1.1. It is understood the key purpose of ADRIC national courses is to both create an opportunity for one standard of training available across the country, and to provide training in regions where quality training may not be available.

7.1.2. The vehicle of delivery of the ADRIC national training programs requires the relevant Affiliate to approve the delivery and the service provider and sign a licence. Affiliates are not required to participate in ADRIC national courses.

7.1.3. ADRIC will ~~strive to~~ set pricing, fees, instructor or other requirements that are fair and reasonable and consider the interests of all Affiliates engaged in program delivery.

Commented [K27]: As permitted by competition laws.

7.1.4 ADRIC and the Affiliates agree to the value of collaboration and consultation in the ongoing development of ADRIC national training programs and Affiliate training programs.

7.1.5 7.2 [1]**National Course Accreditation Program for Designation Eligibility**

7.2. A national course is one of many courses offered that can qualify members for designations. The Regions and ADRIC agree in principle that it is important to have consistency in the accreditation of courses (and Instructors) who are seeking approval that their courses\qualifications meet the education standards required for designations.

Commented [K28]: Intended to clarify that a national course is not the only route to a designation.

Commented [K29]: Intended to clarify that a national course is not the only route to a designation.

Re-word: A national course is one of many courses offered that can qualify members for designations. The Regions and ADRIC agree in principle that consistency is important in the accreditation of courses (and Instructors) who are seeking approval that their courses\qualifications meet the education standards required for designations.

Commented [K30]: Intended to clarify that a national course is not the only route to a designation.

7.2.2 National course accreditation program is supported, with appropriate revenue sharing arrangements established to reflect the management and resource expenditure of the program developed in consultation with the Affiliates. ADRIC will work with Affiliates who offered any course accreditation programs prior to the implementation of a national accreditation program in the Affiliate's region to facilitate a fair and equitable transition.

Commented [K31]: This is a subject which requires further development. There must be negotiation with affiliates who offered prior course accreditation programs. For example they could be offered the option to transition into the national course accreditation program or continue their programs with recognition by other parties to this MOU.

FOR DISCUSSION

8. SUSTAINING OUR ORGANIZATIONS

8.1. Strategic Planning

Federation members will share their strategic plans with and be open to input from one another.

8.2. Inter-Affiliate Communication

Open communication between all Federation members is fundamental to create a strong and aligned Federation. Federation members will maintain a forum to facilitate ongoing communication between the leadership of Federation members. ADRIC will take a lead role in facilitating communication among Affiliates on areas of mutual interest.

8.3. Financial, Revenue sharing

The Financial sustainability of all Federation members is important to the sustainability of the Federation and to provide efficient and effective services to our members. Unnecessary duplication of programs or services will be avoided and opportunities to streamline operations will be continuously explored. Consolidation of services or programs should not disadvantage a Federation member. Fair and equitable revenue sharing arrangements are supported. (For example, including financial incentives for Affiliates to promote National Programs through revenue sharing; or Affiliate programs becoming centralized and ADRIC receiving sufficient revenues to effectively operate the program.)

Commented [K32]: This is a subject area which has divergent opinions and which is essential to clarify for the sustainability of the federation. Where an affiliate or ADRIC is considering a move into an area already occupied by another member of the federation, the application of principles of fairness and collaboration should build agreement by the affected parties to this MOUs and not unilateral action – for example when there are existing affiliates' course approval programs, a national course approval program would not be implemented except by agreement of the affected affiliate(s) and ADRIC.

9. PROMOTING USE AND AWARENESS OF ADR

9.1. The Federation members shall work together on promoting the use and awareness of ADR throughout Canada with ADRIC taking the lead on national marketing and promotional initiatives.

9.2. Each Affiliate is responsible for development and retention of its own membership.

Commented [K33]: This subject area needs more development to clarify the roles of Affiliates and ADRIC.

10. FACILITATING AND PROMOTING WORK FOR PROFESSIONAL MEMBERS

10.1. The Federation members shall cooperate to provide means by which members of the public may select appropriate professional members, such as directories and searchable databases.

FOR DISCUSSION

10.2. As a means of promoting work for members the Federation members may develop and administer rosters of members available to provide services to clients.

Commented [K34]: This needs clarification of ADRIC and Affiliates' roles in rosters and other such programs

10.3. Any revenue which is generated from either of the above activities shall be shared fairly between the Federation members.

ADRIA : Any revenue which is generated from either of the above activities on a national level, or across regional boundaries, shall be shared fairly between the Federation members in the regions covered. *[as originally drafted, this would have implied that Affiliates would be required to share their local directory and roster revenues. - not sure that ADRIC would want to share its AMEX revenue, or other such revenue streams that are not currently shared with the Affiliates]*

11. MEMBERSHIP ACCOUNTABILITY

11.1. Each Federation member may have a Code of Conduct for professional members.

ADRIA: *Not entirely comfortable with suggesting Regional Codes of Conduct without some form of reference to a national (ADRIC) standard.*

~~11.1.~~11.2. Where a Federation member has a Code of Conduct, in order to be a member in good standing, such member must comply with the Code of Conduct, if any, of ADRIC and of the applicable Affiliate.

ADRIA : Confusing clause, especially following 11.1

11.3. Each Federation member must have a process for receiving and acting upon complaints about a member, determining the complaint and imposing discipline, if warranted.

FOR DISCUSSION

ADRIA : Wording Change: Each Federation member must have a process for receiving and acting upon complaints about a member, determining the complaint, imposing discipline if warranted, and acting in concert with ADRIC when required. *[Some disciplinary actions involve ADRIC national designations, national courses and/or membership, and ADRIC should be engaged accordingly/appropriately]*

Consider the following: Wherever the word discipline is used it should be replaced with the word remedy. There may be a multitude of solutions to a particular issue that do not involve discipline and as a dispute resolution organization we should be looking to move away from discipline and in favour of a remedy.

~~11.2.~~

11.4. ADRIC shall maintain records of any determination that a member has breached any provision of a Code of Conduct.

~~11.3.~~ ADRIA: include sharing when there is a breach of bylaws that results in the imposition of a remedy, as well as the Code of Conduct.

12. INTERNATIONAL WORK

12.1. ADRIC will take the lead in international initiatives except that IMAQ, at their option may take the lead in international initiatives involving Francophone communities.

12.2. For all international initiatives the party taking the lead shall provide full information to and collaborate with the other parties to this MOU.

13. RENEWAL OF THIS AGREEMENT

13.1. The following process will be adopted to address the need for the Federation to update this agreement in order to effectively and collaboratively adapt to change.

13.1.1. **Review every 5 years**

The ~~Federation~~ parties to this MOU will review this MOU at least every 5 years. A process to undertake this review shall be determined by mutual

Commented [WH35]: This revised draft is based upon discussions at the ADRIC Board. It is suggested that this recognition of IMAQ's unique role and the importance of information sharing on International initiatives will meet the needs of all parties

Commented [KM36]: What is the effect of not doing a review? Does the MOU expire unless renewed?

FOR DISCUSSION

agreement ~~between~~ by the ~~the leaders of the Federation members~~parties to this MOU.

13.1.2. **Request for MOU Amendment**. In the event that a party to this MOU identifies a need to amend the MOU, the following will occur:

13.1.2.1.1. The party to this MOU seeking the amendment will send a request in writing to all other parties outlining the specific concern with the provisions of the MOU.

13.1.2.1.2. ADRIC will convene a meeting of Federation Presidents (or their appointees) who will discuss the concerns and determine through agreement how the ~~Federation wishes~~ parties to this MOU will ~~to~~ proceed to address them.

14. DISPUTE RESOLUTION AND TERMINATION

ADRIA: This provision requires some further discussion and revision. Rather than attempt such a revision at this time a better approach might be to simply say something along the lines of : "The parties to this MOU agree to resolve any dispute by way of a 3 step dispute resolution process (negotiation, mediation, arbitration) and shall collaborate in the adoption of a mutually acceptable process in this regard". There are a number of models our organizations could look at in this regard. However, if other Federation members are comfortable with the current draft procedure ADRIA has no major problems with it.

~~14.~~

14.1. All disputes arising out of or in connection with this MOU, or in respect of any legal relationship associated with or derived from this MOU (a "Dispute") will be resolved in accordance with this section. Notice of any Dispute shall be given to all parties hereto (the "Dispute Notice"). Any Dispute shall first be ~~Should a difference or dispute arise between an Affiliate and ADRIC, before exercising rights to terminate this contract, thereby ending the Affiliates participation in this Federation, the disputing parties agree to pursue resolution through negotiation~~negotiated.

Commented [KM37]: October 2017 – Changes to clarify meaning

Commented [KM38]: This section needs more discussion.

Commented [KM39]: ADRIC 2017 conference- The suggested changes in this section were drafted by Michael Schaeffler.

FOR DISCUSSION

14.2. Should such negotiation not result in a satisfactory resolution within 15 days of the Dispute Notice, the parties will then attempt to resolve the~~ir differences~~ Dispute through mediation~~. The mediation will be conducted~~ in accordance with the ADRIC National Mediation Rules & Code of Conduct for Mediators ("Mediation Rules").

14.3. Should such mediation not result in a satisfactory resolution within 30 days of the initiation of the mediation, any party may submit the Dispute to arbitration before a single arbitrator to be agreed upon by the parties or failing such agreement by a court of competent jurisdiction in the seat of the arbitration.

14.4. The seat of the arbitration shall be in a Province within the jurisdiction of the Affiliate party or, in the case of multiple Affiliates, in a Province to be agreed upon or, failing agreement, in the City of Toronto.

14.5. The arbitration shall be conducted in accordance with the Arbitration Rules of the ADR Institute of Canada, Inc.

14.6. The language of the arbitration shall be English. To the extent any translation services are required, all parties shall bear the cost of such services equally.

14.7. The award shall be final and binding and not subject to appeal. The parties expressly waive all statutory rights of appeal and rights to seek leave to appeal. The award shall be delivered within 30 days following the completion of the hearing unless otherwise agreed.

14.8. If after the mediation the parties are still unable to resolve their differences, then ~~they~~ any party shall be at liberty to terminate this MOU, terminating the disputing Affiliate's status as an ADRIC Regional Affiliate on giving 90 days notice of termination by either ADRIC of the disputing Affiliate.

ADRIA:

The reference to "mediation" in this clause seems misplaced after all the preceding clauses that detail the Arbitration process (that follows mediation).

Commented [WH40]: Arbitration has been suggested as a final resolution process. A concern is that the present draft favours ADRIC given if a mediated agreement is not reached the Affiliate 's only option is to leave the Federation. This needs further examination\discussion. **Further comment [Dentons]** – the concept of termination requires further thought. 14.4 obviously does not work if arbitration is included in the DR mechanism.

FOR DISCUSSION

Rather than tying the departure of one or more Affiliates from the MOU to the failure of parties to resolve a dispute, there should be a provision that enables any party to withdraw from the MOU upon providing notice (say 90 days) in that regard.

~~14.3.~~

14.9. On termination the Affiliate will forfeit all rights to use any corporate business name, logo or designation or any reference to ADRIC and shall cease any such reference.

ADRIA Change wording: On termination ….. Individual Affiliate members with national designations will be contacted by ADRIC with options such that they can retain their qualifications.

Commented [KM41]: ADRIC 2017 conference – One comment is that we need more consideration about the consequences of termination – Members, Causes, Designations]

15. CONTACT INFORMATION FOR FEDERATION MEMBERS

15.1. Federation members shall provide their current contact information to all other Federation members.

15.2. When there is a change in the contact information the changed information shall be provided to all other Federation members within 7 business days.

FEDERATION MEMBER NAME	ADDRESS	EMAIL ADDRESS	CONTACT PERSON	CONTACT PERSON PHONE	CONTACT PERSON EMAIL

FOR DISCUSSION

Examples of Scope (Roles & Responsibilities) of ADRIC and Affiliates – incorporated into the Roles and Responsibilities section

Commented [KM42]: Do we need to include these examples in the MOU? If they are included what revisions are needed?

ADRIC	Affiliates
• Provides overall marketing and branding guidance to encourage consistency of branding for the Federation	• Affiliates who adopt the ADRIC branding will ensure their marketing is consistent with the ADRIC branding
• Supports and promotes Affiliates in their regional activities, conferences and projects to advance ADR and members nationally and internationally	• Support and promote ADRIC's national activities, conferences and projects to advance ADR and members in their regions
• Supports Affiliates with opportunities to share information, best practices, etc.	• Supports the Federation by sharing information, best practices, etc.
• Provides leadership to coordinate Federation initiatives including problem-solving discussions	• Participates in joint initiatives and problem-solving discussions that support other Affiliates and ADRIC nationally
• Engages Affiliates in the development of an ADRIC strategic Plan	• Considers the ADRIC strategic plan in the Affiliate's planning process
• Includes Affiliates in the work of ADRIC by involving the Affiliates in the recruitment of volunteers from the region to sit on ADRIC Committees	• Contributes to the work of ADRIC by assisting ADRIC in identifying volunteers from their region to sit on ADRIC committees
• ADRIC Develops National Arbitration and Mediation Rules	• Affiliates promote the awareness and use of the rules in their Region
• Continuously develop and implement a national plan to promote the use of ADR throughout Canada, in consultation with the affiliates.	• Support the national plan of ADRIC, and promote the use of ADR within its region and in alignment with the national plan
• Communications to Members will be coordinated to be clear and effective and ensure that the members interests are best served by all.	

FOR DISCUSSION