IV.6.13 - Duty of confidentiality

Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

Commentary:
1 For the Principle to apply, one party must make it clear to the other side that information given shall remain confidential. Absent such a clear indication, a duty of confidentiality may exist if, in light of the circumstances of the case, it would be contrary to the general Principle of good faith and fair dealing to disclose information which one party has received from the other or to use it for own purposes once the negotiations are terminated or broken off.

2 It follows from this Principle that information concerning confidential (settlement) negotiations between the parties are generally considered inadmissible as evidence in subsequent arbitration or court proceedings. The same applies to oral or written declarations or statements by the parties in mediation ("mediation privilege").