

MEDIATION AGREEMENT

Date of agreement

.....

Parties to the agreement

.....
(please print)

.....
(please print)

.....
(please print)

.....
(please print)

Dispute

- 1 The dispute that is the subject of the Mediation is described in the Schedule (**Dispute**).

Appointment and Role of Mediator

- 2 The Parties appoint the Mediator specified in the Schedule, and the Mediator accepts the appointment, to mediate the Dispute described in the Schedule in accordance with the terms of this agreement.
- 3 The Mediator will act fairly and impartially and assist the Parties to explore and develop options for and, if possible, to achieve the expeditious resolution of the Dispute by agreement between them.
- 4 The Mediator will not make decisions for a Party or act as an arbitrator.
- 5 The Mediator will not give legal or other advice, decide how the Dispute should be resolved, make decisions for a Party, impose a solution on the Parties or ensure that any settlement is fair.

The Mediation

- 6 The mediation will take place on the date and at the location set out in the Schedule unless agreed otherwise between the parties and the Mediator.
- 7 The mediation, including all preliminary steps, will be conducted in such manner as the Mediator considers appropriate having due regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution of the Dispute and the view of each Party as to the conduct of the mediation.

- 8 The Mediator may give directions in respect to the conduct of the mediation, including directions for:
 - (a) preliminary conferences prior to the mediation;
 - (b) any steps to be taken to define issues, narrow the Dispute, identify areas of agreement and/or clarify the basis of disagreement;
 - (c) the exchange and service on the Mediator prior to the mediation of position statements, written submissions, reports and other documents relevant to the Mediation;
 - (d) service on the Mediator prior to the mediation of any pleadings, reports, submissions, affidavits or other documents filed in or prepared for existing proceedings relating to the Dispute; and
 - (e) presentations by any experts retained by the Parties and any joint conferences by experts.
- 9 Any Party who provides the Mediator with a document will at the same time provide a copy to every other Party unless the document is provided to the Mediator on a confidential basis in accordance with clause 18.
- 10 The Parties must cooperate and act courteously and participate in good faith throughout the mediation and use their best endeavours to comply with reasonable requests made and procedural directions given by the Mediator in connection with the mediation.

Conflicts of interest

- 11 The Mediator has, to the best of his/her knowledge, disclosed to the Parties any prior dealings the Mediator has had with any of them and any interest the Mediator has in the Dispute.
- 12 If, in the course of the mediation, the Mediator becomes aware of any circumstances that might reasonably be considered to affect his/her capacity to act impartially, the Mediator will immediately inform the Parties of those circumstances. The Parties will then confer and, if agreed, continue with the mediation before the Mediator or terminate the mediation in accordance with this agreement.

Authority to settle and representation at the Mediation

- 13 Subject to this agreement and unless otherwise agreed, each Party must be in attendance throughout the mediation.
- 14 If a Party is not a natural person, it must be represented at the mediation by a person with full authority to:
 - (a) negotiate and settle the Dispute, and
 - (b) sign a settlement agreement binding on that Party.

- 15 If a Party is a natural person, the Party must attend the mediation except where that Party is a director of a company which is also a Party and the company is represented by another director with full authority to settle on behalf of the company and the natural person.
- 16 A Party may appoint legal practitioners and other suitable persons to assist and advise the Party in the mediation and to perform such role or roles in the mediation as the Party requires.

Communication between the Mediator and a Party

- 17 The Mediator may meet or communicate orally or in writing with the Parties together or with a Party alone as frequently as the Mediator considers appropriate. If the Mediator meets with or communicates with a Party alone, the Mediator need not disclose the meeting to any other Party.
- 18 Any information, whether oral or written, disclosed to the Mediator in private will be treated by the Mediator as confidential and will not be disclosed to another Party unless the Mediator is authorised to do so by the Party making the disclosure or required by law to do so.

Confidentiality of the Mediation

- 19 The Parties and the Mediator will not disclose any information or documents provided to them in the course of or for the purposes of the mediation to anyone not involved in the mediation unless
 - (a) authorised by the disclosing Party to do so;
 - (b) in accordance with a requirement imposed by or under a law of the State or the Commonwealth).
- 20 For the purposes of clause 19(a), the Parties are authorised to make disclosure to their legal advisors and/or their insurers on the condition that those persons agree to keep the information or documents confidential.
- 21 Each Party agrees to ensure that any person who attends the mediation on their behalf as an adviser, representative or otherwise, signs a confidentiality agreement in the form attached to this agreement as a condition of that person being allowed to attend the information.

Privilege

- 22 Subject to this agreement and any legal obligation, any admission, concession, proposal or other statement or document made, prepared or disclosed in connection with the mediation other than a binding settlement will
 - (a) be “without prejudice”;
 - (b) retain the benefit of any privilege, including legal professional privilege, that would otherwise have applied; and
 - (c) not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings.

Settlement

- 23 Any resolution of the Dispute in whole or in part will not be binding until the Parties have recorded their terms of settlement in writing in a document which is signed by all Parties or their authorised representatives before the conclusion of the Mediation and a copy provided to each Party.
- 24 The Parties may agree that the terms of settlement be confidential except for the purpose of enforcement.

Enforcement

- 25 Any Party to a settlement will be at liberty to enforce the settlement by judicial proceedings.

Termination

- 26 Subject to any order of a court of competent jurisdiction, the mediation will terminate in respect of the Dispute when:
 - (a) the time allocated for the mediation has expired and the Parties have not agreed in writing to continue the mediation; or
 - (b) a settlement agreement is signed in respect of the Dispute; or
 - (c) a Party, after consultation with the Mediator, gives written notice of termination to the other Parties and the Mediator.

Exclusion of liability

- 27 The Mediator will not be liable to a Party except in the case of fraud by the Mediator for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement.
- 28 The Parties jointly and severally release the Mediator from and indemnify the Mediator against all liability of any kind whatsoever (whether involving alleged negligence or not) arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement.

Costs of Mediation

- 29 The Parties will be liable for the Mediator's fees and expenses set out in the Schedule in the proportions set out in the Schedule and will indemnify the Mediator in relation to those fees and expenses.
- 30 The Mediator will render a tax invoice for his/her fees to each of the Parties, and the fees will be payable within 14 days of the issue of the tax invoice.
- 31 Each Party will pay its own costs and expenses of the mediation unless the Parties agree otherwise.

32 Where the dispute is the subject of existing court proceedings and is not resolved in full at the Mediation then, unless the Court orders otherwise, the costs of the mediation will be the costs in the cause in those proceedings. That is, the costs will be treated as part of the overall costs of the proceedings which are generally payable by the unsuccessful party.

Notification to Court

33 Where the mediation has been ordered by a court under the *Civil Procedure Act 2005* (NSW), the Mediator will, within 7 days after the conclusion of the mediation in accordance with Uniform Civil Procedure Rule 20.7, advise the court of the time and date that the mediation commenced and concluded.

Signatures

This Mediation agreement is signed by the parties and the Mediator:

.....
(Name of party) (please print)

.....
(signature)

.....
(Name of Mediator) (please print)

.....
(signature)

Schedule

Mediator

| | |
|--------------------|--|
| Mediator | |
| Mediator's Address | |

Time and location of mediation

| | |
|-------|--|
| Venue | |
| Date | |
| Time | |

Dispute

| | |
|---|--|
| Set out brief description of subject matter of Dispute, or | |
| The subject of Proceeding No [insert file number] in [insert Court] | |

Mediator's Fees

| | |
|--|---------------|
| Fees for each day of the mediation | \$ (plus GST) |
| Fees per hour, for any additional time, including preparation and preliminary conference | \$ (plus GST) |

