

MEDIATION AGREEMENT

Date:

Parties:

Mediator: Royden Douglas Clifford Hindle of Auckland, mediator

CONTEXT

- A. The dispute referred to in Schedule 1 has arisen between the parties.
- B. The parties wish to resolve the dispute.
- C. The mediator has agreed to help them to do so on the terms which follow.

AGREEMENT

The mediation

1. The mediation shall comprise:
 - (i) All communications between any party or parties on the one hand and the mediator on the other in connection with the mediation process established under this agreement,
 - (ii) Any and all preliminary conferences, and the mediation meeting or meetings,

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- (iii) Any and all steps taken, and documents prepared, exchanged or provided, solely in preparation for, or at, such meeting(s), and
- (iv) Any and all subsequent steps taken for the purpose of achieving a legally binding settlement agreement arising out of the mediation undertaken with the mediator.

Appointment and functions of the mediator

- 2. The parties appoint the mediator to mediate the dispute in accordance with the terms of this agreement, and the mediator accepts the appointment.
- 3. The mediator will help the parties to identify the issues between them, to develop options for resolution of those issues, and to try to reach an agreement that accommodates their interests.
- 4. The mediator will not make a decision for the parties, or undertake responsibility for advising any party. Any comments or recommendations by the mediator are not intended to be relied upon as legal and/or professional advice.
- 5. The mediator confirms that to his knowledge he has no interest in the dispute, nor has he had any relevant prior dealings with any of the parties in relation to the dispute. The mediator will not after appointment as mediator under this agreement accept any appointment in relation to any other legal proceedings concerning the dispute.

Co-operation

- 6. Each party will comply with the mediator's reasonable requests for assistance in attempting to resolve the dispute including (but not limited to) the provision of documents and submissions, the disclosure of information, and attendance at meetings called by the mediator.

Costs

7. Each party will meet its own costs in connection with the mediation.
8. Irrespective of the outcome of the mediation the parties will be jointly and severally liable to pay the mediator's fees and disbursements, and will provide any security for payment and/ or make payment in advance as may be requested by the mediator.
9. The mediator's fee to convene and conduct a preliminary conference, prepare for the mediation and attend a day of mediation or any part thereof will be \$5,000.00 excluding GST. For any second or subsequent day or days of mediation or any part thereof the mediator's fee will be \$4,000.00 excluding GST. The mediator will also be entitled to be reimbursed by the parties for any venue hire and/or catering costs incurred by him in connection with the mediation.
10. Although the mediator does not charge for his travel and/or accommodation costs, if the mediation is cancelled or postponed after any such costs have been incurred then, unless the mediator is responsible for the cancellation or postponement, the parties will reimburse the mediator for all such costs which the mediator is not able to recover from the service providers.

Conduct of the mediation

11. The parties will do all that they reasonably can in a good faith attempt to settle the dispute.
12. The mediation will be conducted in such manner as the mediator considers appropriate having due regard to the views of each party. In particular the mediator may give directions as to:
 - (i) The holding of preliminary conferences in person or by telephone;
 - (ii) The exchange of written outlines of the views of the parties on the issues raised by the dispute;

- (iii) The exchange of experts' reports, the meeting of experts and the preparation of a joint experts' report;
 - (iv) Service of any such reports and outlines on the mediator and other parties.
- 13. Unless agreed otherwise, each party will attend each mediation meeting and will have, or be able during the course of the meeting to obtain, authority to settle the dispute.
- 14. Other persons may attend mediation meetings only with the consent of all parties, although it is anticipated that such consent would be forthcoming to experts instructed by the parties.
- 15. The mediator may as frequently as the mediator deems appropriate communicate or meet with the parties and/or any of the parties' representatives together or separately.

Confidentiality

- 16. The mediation is a 'without prejudice' process, and is confidential. There will be no disclosure outside the mediation of any information, or documentation disclosed, or of any of the exchanges between the parties and/or the mediator, during the mediation (including the preliminary steps), subject only to the following exceptions:
 - (i) Where required to prove any settlement agreement reached as a result of the mediation, and/or to establish the meaning and/or validity of such an agreement;
 - (ii) Where disclosure is for the limited purpose of obtaining professional advice (and only after obtaining the proposed adviser's agreement to maintain the confidentiality of the disclosed material according);
 - (iii) In the case of any overriding legal obligations, going beyond the powers of the parties or mediator to resist;
 - (iv) Where disclosure is required to prevent the safety of any person from being endangered; and/or

- (v) In cases where there is already litigation between the parties, documents which would in any event have been discoverable, or have been required to be served, in that litigation.
- 17. If the mediator receives information from one party in private he will not disclose it to any other party without the consent of the party that has provided it.
- 18. All persons attending the mediation other than the parties will sign the confidentiality agreement set out in Schedule 2.

Termination

- 19. A party may terminate the mediation at any time after consultation with the mediator.
- 20. The mediator may terminate involvement in the dispute resolution process at any time after consultation with the parties.
- 21. In the absence of notice of such termination the mediation will be terminated only upon execution of a written settlement agreement in respect of the dispute, such agreement to be drawn up and executed as soon as possible after the terms of settlement have been agreed on.

Exclusion of liability and indemnity

- 22. The mediator will not be liable to any person, including the parties or any party to this agreement and any non-party attendees at the mediation, for any act or omission by the mediator in respect of the performance, purported performance and/or non-performance by the mediator of his or her powers and duties under this agreement. It is expressly acknowledged that the purpose of this clause is to provide the mediator with the widest immunity from liability that the law will allow including but not limited to immunity from claims arising or which may be alleged to arise in contract, negligence, and/or for breach of any equitable, fiduciary, statutory or other duty.

23. In the event that a claim is brought against the mediator notwithstanding the provisions of clause 22, the parties and each of them will indemnify the mediator in respect of any such claim.

24. No statements or comments, whether written or oral, made or used by the parties or their representatives or the mediator within the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

Execution of copies of this agreement

25. This agreement may be signed in two or more identical counterparts, each of which shall be deemed to be original whether or not a photocopy or facsimile copy. The counterparts shall together constitute the same instrument and shall be binding as soon as all parties have executed one such counterpart.

Party and mediator execution:

Signed by:

Print name:

Signed by:

Print name:

Signed by

Print Name:

Signed by

Print Name:

Signed by

the mediator

Royden Douglas Clifford Hindle

Schedule 1:

Description of Dispute including title and number of any related legal proceedings:

Schedule 2

Confidentiality agreement by non-party attendees

The undersigned undertake that in consideration of their attendance at the mediation referred to in the foregoing document they will not disclose to any person not present at the mediation, nor use, nor give evidence about, nor call any witnesses or produce documents as to any communications or information made or furnished during the mediation, subject only to the following exceptions:

- (i) Where required to prove any settlement agreement reached as a result of the mediation, and/or to establish the meaning and/or validity of such an agreement;
- (ii) In the case of any overriding legal obligations, going beyond the powers of the parties or mediator to resist;
- (iii) Where disclosure is required to prevent the safety of any person from being endangered.

Non party attendee 1: _____
Print name:

Non party attendee 2: _____
Print name:

Non party attendee 3: _____
Print name:

Non party attendee 4: _____
Print name:

Non party attendee 5: _____
Print name: