

MEDIATION AGREEMENT

This Agreement is executed on [insert date]

BETWEEN

1. [Insert details] (“The Participants”)
2. [Insert details] (“The Mediator”)

Background

- A conflict or dispute, as briefly set out in Schedule 1, has arisen between the Participants.
- The Participants to this Agreement have requested the services of the Mediator and the Mediator has agreed subject to the terms and conditions of this Agreement, to assist the Participants in their attempts to resolve the Dispute.
- The Participants agree to be bound by the terms and conditions of this Mediation Agreement.

Definitions

In this document:

- **ADR** means Alternative Dispute Resolution;
- **Confidential Information** means information not to be revealed to a third party;
- **Mediation** means all steps taken to attempt to resolve the Dispute by mediation whether prior or subsequent to the execution of this Agreement;
- **The Mediator** means the conciliator and mediator;
- **The Dispute** means the disagreement between Participants; and
- **The Participants** mean opposing parties seeking an amenable outcome and/or agreement.

Appointment & Function of Mediator

1. The Participants appoint the Mediator, and the Mediator accepts the appointment, to mediate the Dispute in accordance with ADR principals and the terms of this Agreement.
2. The Mediator will assist the Participants to identify the issues between them and to explore options for and, if possible to achieve, the expeditious resolution of the Dispute by Agreement between them.
3. The Mediator will not advise a Participant, nor make decisions for nor impose a solution on the Participants.
4. Mediator will not, unless the Participants agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the Dispute. Any such advice or opinion shall be obtained only from such person or persons as may be agreed by the Participants.
5. The Mediator confirms that the Mediator has no interest in the Dispute, nor has the Mediator had any prior dealings with any of the Participants in relation to the Dispute.
6. If in the course of the Mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator will, to the extent that the Mediator may properly do so, immediately inform the Participants of those circumstances. The Participants will then confer and the Mediator will continue to participate in the Mediation if the Participants so agree.
7. If, after consultation with the Participants, the Mediator forms the view that they will be unable to assist the Participants to achieve resolution of any of the Dispute, the Mediator may terminate the appointment as Mediator by giving written notice to the Participants of that termination.

Participants Co-Operation

8. The Participants shall participate in the Mediation as mutually agreed. The Participant must advise the Mediator in a timely manner if unable to attend any scheduled conferences.
9. The Participants must comply with reasonable requests and provide paper work and any other evidence requested by the Mediator from time to time, to promote the efficient and expeditious resolution of the Dispute.

Mediator Costs and Fees

10. Each Participant will meet its own costs of and in connection with the Mediation.
11. Irrespective of the outcome the Participants will pay the Mediator's fees and disbursements as specified in Schedule 2, in the proportions there stated.
12. The Mediator may charge interest at fifteen percent (15%) per annum calculated on a daily basis on amounts not paid within the Mediator's payment terms as specified in schedule 2.
13. The Participants must pay to the Mediator any costs, expenses or losses incurred by the Mediator as a result of the Participants failure to pay to the Mediator all sums outstanding as owed by the Participants to the Mediator including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis..

Authority and Representation

14. Each Participant may be represented at the Mediation conference by a person or persons having or able during the course of the Mediation to obtain authority to settle the Dispute.

15. Any persons other than the Participants (including legally qualified persons) attending the Mediation to assist and advise a Participant in Mediation shall sign an acknowledgement and undertaking as to confidentiality as specified in Schedule 3.

Conduct of the Mediation

16. The Mediation, including all preliminary steps, shall be conducted in such manner as the Mediator considers appropriate having due regard to the view of each Participant, and the Mediator may give directions as to:
- i. the holding of preliminary conferences;
 - ii. the exchange of written outlines of the views of the Participants on the issues raised by the Dispute;
 - iii. the exchange of experts' reports, the meeting of experts and the preparation of a joint expert's report
 - iv. service on the Mediator of any such reports and outlines.

Communication between the Mediator and a Participant

17. The Mediator may communicate with a Participant orally or in writing.
18. The Mediator may, as frequently as the Mediator deems appropriate, meet with the Participants together or separately for Mediation.
19. Information, whether oral or written, disclosed in confidence by a Participant to the Mediator need not be disclosed by that Participant, and may not be disclosed by the Mediator to any other Participant unless the Participant by whom that information was disclosed consents to such disclosure.

Confidentiality

20. The Participants and the Mediator will not unless required by law to do so, disclose to any person not present at the Mediation, nor use, any confidential information furnished during the Mediation unless such disclosure is to obtain professional advice or is to a person within that Participant's legitimate field of intimacy, and the person to whom the disclosure is made is advised that the confidential information is confidential.
21. The Mediator agrees to keep confidential all other information furnished by a Participant on a confidential basis, unless otherwise allowed for by that Participant.

Privilege

22. Subject to Clause 32, in any arbitral or judicial proceedings the following Mediation will at all times be kept confidential and will be privileged, and the Participants and the Mediator will not disclose nor rely upon them nor issue nor cause to be issued any subpoena to give evidence or to produce documents concerning them:
- i. any settlement proposal;
 - ii. the willingness of a Participant to consider any such proposal;
 - iii. any statement, admission or concession made by a Participant or Mediator.

Subpoenaed to Provide Evidence

23. Should there be cause for the Mediator to be present to give evidence at any time, then the Participants acknowledge and agree that the Mediator's hourly rate will apply and shall be payable by the Participants.

Termination

24. The Participants and/or the Mediator may at any time terminate the Mediation by giving written notice. Subject to Schedule 2 the Participant terminating the Agreement shall pay all costs, losses or expenses incurred by the Mediator up to that date, a cancellation fee may apply.
25. In the absence of notice by a Participant terminating the Mediation, the Mediation will be terminated only upon execution of a written settlement Agreement in respect of the Dispute. Such settlement Agreement shall be drawn up and executed at the earliest possible time after the terms of settlement have been agreed on.

Enforcement

26. Any Participant will be at liberty:
- (i) to enforce the terms of a settlement Agreement;
 - (ii) in any enforcement proceedings to adduce evidence of and incidental to the settlement Agreement including evidence from the Mediator and any other person engaged in the Mediation.
27. The Mediator will not accept appointment as an arbitrator nor act as an advocate in, nor provide advice to a Participant to, any arbitral or judicial proceeding relating to the Dispute or any of them.
28. The Participant will not do anything to cause the Mediator to breach Clause 27.

Exclusion of Liability and Indemnity

29. The Mediator will not be liable to a Participant for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
30. Each Participant indemnifies the Mediator against all claims by that Participant or anyone claiming under or through that Participant, 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, unless the act or omission is fraudulent.
31. No statements or comments, whether written or oral, made or used by the Participants 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.

Legislative Provisions

32. The terms of this Agreement are subject to the provisions of any legislation that may be applicable to or govern the Mediation, and in the event of any inconsistency the provisions of the legislation will prevail.

Schedule 1

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

Schedule 2**a) The Mediator's Fees and Expenses**

1.	Preparation including the preliminary conference	\$	per hour
2.	Mediation	\$	per hour
3.	Accommodation, meals & travel expenses (if applicable) at cost	\$	
4.	Long distance calls, couriers etc. (if applicable)	\$	
5.	Room hire fees	\$	

b) Allocation of Costs

Participant 1	%
Participant 2	%
Participant 3	%
Participant 4	%

OR

All Participants equally (Tick if agreed)

c) The Mediator's payment terms are strictly 14 days from date of invoice

Schedule 3

Acknowledgment and Undertaking

and

and

(“The Participants”)

and

(“The Mediator”)

have entered into this Agreement on **[insert date]** in accordance with which the Mediator will conduct Mediation.

1. The undersigned acknowledge by their signatures that they attend Mediation on the basis of their Agreement to Clause 2 and 3 below.
2. Each of the undersigned undertakes to the Participants and the Mediator:
 - i. to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the Mediation including the preliminary steps;
 - ii. not to act contrary to the undertaking in sub-paragraph (i) unless compelled by law to do so with the consent of the Participant who disclosed the confidential information;
 - iii. not to use confidential information for a purpose other than Mediation.
3. Each of the undersigned undertakes to the Participants and the Mediator that the following will be privileged and will not be disclosed in or relied on or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceedings between the Participants to the Mediation:
 - i. any settlement proposal;
 - ii. the willingness of a Participant to consider any such proposal;
 - iii. any admission or concession made by a Participant;
 - iv. any statement or document made by the Mediator.

Execution Pages

DATED this day of, year

SIGNED BY

.....)
[print name of Participant]) **Participant's signature**

in the presence of:

.....)
[name of Witness] printed) **Witnesses' signature**

.....)
[address of Witness]) **Witnesses' occupation**

SIGNED BY

.....)
[print name of Participant]) **Participant's signature**

in the presence of:

.....)
[name of Witness] printed) **Witnesses' signature**

.....)
[address of Witness]) **Witnesses' occupation**

SIGNED BY

.....)
[print name of Participant]) **Participant's signature**

in the presence of:

.....)
[name of Witness] printed) **Witnesses' signature**

.....)
[address of Witness]) **Witnesses' occupation**

Execution Pages

SIGNED BY

.....)
[print name of Participant]) Participant's signature

in the presence of:

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[address of Witness]) Witnesses' occupation

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in the presence of:

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