

MEDIATION AGREEMENT

PARTIES TO THE AGREEMENT:

- 1.
- 2.

("PARTIES")

AND

JOHN PAUL VOHRALIK, Accredited Mediator NMAS
("the MEDIATOR")

Engagement

1. The Parties appoint the Mediator and the Mediator accepts the appointment to mediate ("Mediation") the Dispute (as defined in the Schedule) pursuant to this agreement ("Mediation Agreement"), such Mediation to be held at a time and place agreed to by the Parties and the Mediator.

Mediator's Role

2. The Mediator will:
 - (a) impartially and equitably attempt to resolve the Dispute by assisting the Parties to explore and consider each other Party's stance and basis for her/his/its stance and by discussing the advantages and disadvantages of such stance;
 - (b) invite the Parties to explore relevant legal arguments, causes of action, defences and remedies (where appropriate);
 - (c) consider each Party's rights/obligations/duties and arguments;
 - (d) attempt to narrow the issues the subject of the Dispute and options for resolution of those issues; and
 - (e) endeavour to bring the Parties to a resolution which is mutually agreeable.

3. The Mediator is not obliged:
 - (a) to give legal or commercial advice;
 - (b) to decide how, on what terms, or if, a resolution of the Dispute is reached;
 - (c) to ensure that any resolution reached is equitable; or
 - (d) to make any statements and/or recommendations.

Impartiality

4. The Mediator is, and will remain for the entirety of the Mediation, impartial and indifferent to each Party's interest.
5. The Mediator will disclose to all Parties as soon as practicable after any matter arises, which matter would or could derogate from the Mediator's duty at clause 4 above. After being notified of any matter pursuant to this clause, each Party will have an absolutely unfettered discretion to decide whether the Mediation is to continue. However, the Parties accept prior to executing this Mediation Agreement that the Mediator may have, or have had:
 - (a) professional or personal relationships with legal practitioners;
 - (b) professional or personal relationships with corporate entities and their officers;
 - (c) personal interests in assets including shares in such corporate entities,and that alone does not affect the Mediator's ability to comply with his duty at clause 4 above.
6. Nothing said or recommended by the Mediator is binding on any Party.

Pre-Mediation Conference

7. Part of the preparation for the Mediation will include, (if the parties and/or the Mediator consider it necessary), a pre-mediation conference, to be held between the Mediator and each Party separately, which will take place no later than five days before the Mediation. This conference will take place at a time and place agreed between the Parties and the Mediator as soon as convenient after appointment of the Mediator, and may be held by telephone or by other means.

8. Each Party (or her/his/its representative) must attend the pre-mediation conference and abide by any reasonable and agreed pre-mediation directions (procedural or otherwise) given by the Mediator.

Conduct at the Mediation

9. Only Parties and their representatives are to attend the Mediation. Any other person who attends the Mediation (for example, a support person) is to sign and abide by the conditions and obligations of this Mediation Agreement.
10. Each Party (or her/his/its representative) must attend the Mediation and must have the requisite knowledge and authority to discuss the Dispute, engage in negotiation and settlement discussions to seek to resolve the Dispute (including to consider resolution of the Dispute in a realistic range, after considering best, worst and probable alternatives to a mediated agreement) and be legally able to execute a final and binding settlement agreement on behalf of that Party.
11. Each Party will participate honestly, co-operate in good faith with each other and the Mediator, be well-mannered and courteous towards all other Parties, their representatives and the Mediator.
12. Each Party will abide by all reasonable requests and directions made by the Mediator during the Mediation.
13. The Mediator may terminate the Mediation if any Party does not have authority to settle the Dispute.

Legal or other Representation

14. Each Party has the right to legal or other representation at the Mediation and pre-mediation conference.
15. Each representative of a Party is to execute this Mediation Agreement and abide by their and their principal's obligations.

Directions

16. The Mediator may give directions concerning the form of the Mediation, the pre-mediation conference and any preparation for the Mediation, including but not limited to:

- (a) the exchange of any necessary documents including pleadings, reports, affidavits, statements, position papers, statements of issues or agreed facts and provision of those documents to the Mediator;
 - (b) narrowing and defining the issues in dispute; or
 - (c) identifying the areas of agreement.
17. Each document at 16(a) which is provided to the Mediator is to be provided within a reasonable time to each other Party unless the other Party or Parties has a copy of the same, in which case the Party providing the document need only provide a copy of the communication which sets out the documents which were so delivered.

Transparency of Communications

18. The Mediator will meet and/or correspond with each party, together or separately, as frequently as necessary. Each Party, (in the case of a separate meeting or correspondence), will disclose the contents or essence of such meeting or correspondence to all other Parties as soon as possible, unless the substance of such communication was confidential.

Confidentiality

19. The Mediator will not disclose any document or information provided to him in confidence unless he is compelled to do so by law or is expressly authorised to do so by the Party who disclosed such information or document.
20. Any person attending the Mediation who gathers confidential information, in either oral or documentary form, by virtue of their attendance at the Mediation must not disclose or use that confidential information unless:
- (a) compelled to do so by law;
 - (b) it is disclosed in accordance with the provisions of this Mediation Agreement;
 - (c) it becomes public information (other than by a breach of this Mediation Agreement); or
 - (d) expressly authorised by all Parties to this Mediation Agreement.
21. All persons who have executed this Mediation Agreement can discuss confidential information that they become aware of during the Mediation only for the purpose of the

Mediation and on the proviso that any confidential information is not further disclosed unless and/or until a condition in clause 20(a) – (d) would allow or force its disclosure.

Privilege

22. The entirety of the Mediation including the pre-mediation conference and including but not limited to:

- (a) any disclosure and/or admission (either explicit or implicit);
- (b) any offer, concession, proposal, compromise or rejection of the same;
- (c) anything said or done or any document prepared, including notes of the Parties, their representatives or the Mediator,

during or in connection with the Mediation, is said, produced or put on a "without prejudice" basis (as that term is defined in the Evidence Act and at common law) and will not and does not lose any privilege which attracts to it by virtue of that fact.

23. No Party will cause a Subpoena or Notice to Produce, (or any other compulsive disclosure instrument) to be issued or served seeking such a document or information to be produced or evidence to be given which a Party became aware of, or was privy to, in connection with and/or as a result of the Mediation.

24. Nothing said or disclosed during the Mediation will prejudice a Party's rights, save for a fully executed binding settlement agreement, in any judicial or other proceedings in connection with the Dispute.

Resolution

25. Excepting a fully executed settlement agreement in writing entered into by the Parties, (or a similarly enforceable and binding precursor to such an agreement), there is no settlement of the Dispute.

26. If an agreement is reached the Parties will do all that is necessary to give efficacy to the resolution including, if at all possible, draft and sign a settlement agreement immediately and before the conclusion of the Mediation.

27. Unless otherwise agreed between the Parties the terms of the settlement are to be kept confidential, except as permitted by clause 28 below.

28. Any binding settlement agreement will be enforceable, and hence the terms of it can be disclosed, in any judicial or other proceedings in an appropriate forum commenced by a Party to enforce such an agreement. Subject to clause 40, any Party may call evidence of the settlement agreement including evidence from a Party's representative engaged in the Mediation.

Termination of Mediation

29. The Mediation will be terminated immediately upon an order to that effect being made by a Court.
30. The Mediation will also be terminated upon the occurrence of:
- (a) a fully executed binding settlement agreement being entered into in respect of the Dispute;
 - (b) a Party giving written notice to all other parties and the Mediator (but only after prior consultation with the Mediator), with just and reasonable cause of their intention to terminate; or
 - (c) the Mediator giving notice to the Parties that he does not, with just and reasonable cause, want to continue as Mediator, or that he is satisfied (after prior consultation with the Parties) that a resolution of the Dispute is not likely to occur.
31. The termination of the Mediation will not operate retrospectively and therefore will not affect the rights (if any) which a Party may have accrued during the Mediation up to the termination.
32. The termination will not prevent the Mediator from notifying any person or body, including a court, which he is required or permitted to do by law, of the fact that the Mediation has been terminated.

Remuneration and Costs

33. The Parties agree to pay the Mediator, by no later than the conclusion of the Mediation, and irrespective of any agreement being reached at the Mediation, and irrespective of a Mediation being held:
- (a) \$3,200.00 per 8 hour day (plus GST) for the Mediation session;

- (b) \$400.00 per hour (plus GST) for any time spent over and above 8 hours for the Mediation session, and for time spent preparing for the Mediation, including time spent at any pre-mediation conferences, reading documents, pleadings and position papers or corresponding with the Parties; and
 - (c) any necessary travel, accommodation or other reasonable expenses incurred by the Mediator in connection with the Mediation, including copying or printing documents emailed by the Parties or their representatives (which copying/printing will be charged at \$0.50 per page plus GST).
34. The Mediator will render an invoice for his services. Payment may be made by EFT to the following account:
- Account Name: John Vohralik t/as Vohralik Mediation
Bank: National Australia Bank
BSB: 082 001
Account No: 7812 34335
35. The Parties agree to pay the Mediator's remuneration and expenses equally unless otherwise agreed between the Parties and the Mediator. The Parties are however jointly and severally liable for the Mediator's remuneration and expenses.
36. The Parties shall pay their own costs to attend the Mediation including the costs of their representatives.
37. Other expenses of the Mediation such as room hire shall be paid in equal shares by the Parties.
38. For the purpose of sharing the remuneration, costs and expenses of the Mediation, where there are multiple parties, all who participate as a single group shall be deemed to constitute a single party. In case of any doubt or dispute the ruling of the Mediator on this point shall be final and binding.

Post mediation Conduct

39. After completion or termination of the Mediation, the Mediator will not advise or act for a Party, either by way of providing legal services, or as an adjudicator or arbitrator in respect of the Dispute.
40. The Parties will not compel the Mediator, by way of subpoena or other instrument of compulsion at law, to give evidence in any subsequent proceedings, including any

consequent dispute seeking the enforcement or setting aside of any alleged settlement agreement claimed to have been reached at the Mediation.

Mediator's Immunity

41. The Mediator is not liable for any statement, act or omission in connection with the Mediation unless the act or omission is fraudulent. The Parties together and separately indemnify the Mediator against any claim for any statement, act or omission in assisting the Parties to resolve the Dispute unless the act or omission is fraudulent.
42. The Mediator will be immune from suit in any court as if he was a member of the judiciary making a determination in judicial proceedings.
43. No Party will bring any proceedings against the Mediator for any act or omission in connection with the Mediation.

Execution

44. This agreement is effective from the date that all Parties (and their representatives where appropriate) and the Mediator execute this Mediation Agreement or a counterpart of it.

National Mediator Standards

45. The Mediator is required to inform the Parties where and how they can access the Australian National Mediator Accreditation Standards Practice Standards ("Standards"), which Standards the Mediator must comply with. Those Standards can be accessed at the following website of the Mediator Standards Board:

<http://msb.org.au/sites/default/files/documents/Practice%20Standards.pdf>

46. The mediation process is explained in the attached clause 2 "Description of a mediation process" from the Standards. Each Party confirms that the Mediator has provided this outline to them and provided them with an opportunity to reach agreement about the way in which the mediation process is to be conducted.

SCHEDULE

SUMMARY OF DISPUTE ("DISPUTE")

ANNEXURE "A"

Clause 2 – Description of a Mediation Process

The purpose of a mediation process is to maximise participants' decision making.

1. A mediation process is a process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to assist the participants to reach their decision.
2. Mediation processes are not a substitute for individual or organisational legal and/or other expert advice, or individual counselling or therapy. Mediation processes may not be appropriate for all disputants or all types of disputes.
3. The goal of a mediation process is agreed upon by the participants with the assistance of the mediator. Examples of goals may include assisting the participants to make a wise decision, to clarify the terms of a workable agreement and/or future patterns of communication that meet the participants' needs and interests, as well as the needs and interests of others who are affected by the dispute.
4. The mediation process may:
 - (a) assist the participants to define and clarify the issues under consideration;
 - (b) assist participants to communicate and exchange relevant information;
 - (c) invite the clarification of issues and disputes to increase the range of options;
 - (d) provide opportunities for understanding;
 - (e) facilitate an awareness of mutual and individual interests;
 - (f) help the participants generate and evaluate various options; and
 - (g) promote a focus on the interests and needs of those who may be subject to, or affected by the situation and proposed options.
5. Mediators do not advise upon, evaluate or determine disputes. They assist in managing the process of dispute and conflict resolution whereby the participants agree upon the outcomes, when appropriate. Mediation is essentially a process that maximises the self determination of the participants. The principle of self determination requires that mediation processes be non-directive as to content.
6. Some mediation processes may involve participants seeking expert information from a mediator which will not infringe upon participant self-determination. Such information is deemed to be consistent with a mediation process if that information is couched in general and non-prescriptive terms, and presented at a stage of the process which enables participants to integrate it into their decision making. Such information might include the provision of general information and a reference to available material that could assist the participants. For example, a

referral to resources that could be used by parents in a family dispute to determine the impact of options upon children or other family members.

7. Some mediators may use a "blended process" model whereby they provide advice. These processes are sometimes referred to as "advisory mediation", "evaluative mediation" or "conciliation". Such processes may involve the provision of expert information and advice, provided it is given in a manner that enhances the principle of self-determination and provided that the participants request that such advice be provided. Mediators who provide expert advice are required to have appropriate expertise (see Approval Standards Section 5(4)) and to obtain the consent of participants prior to providing any advisory process.

Executed by the Parties:

Date:

Date:

.....
Name of Party:

.....
Name of Party:

Title of Person (if Corporation):
Name of Person (if Corporation):

Title of Person (if Corporation):
Name of Person (if Corporation):

Name of Representative:

Name of Representative:
.....

Name of Party:

Name of Party:

Title of Person (if Corporation):
Name of Person (if Corporation):

Title of Person (if Corporation):
Name of Person (if Corporation):

.....
Name of Representative:

.....
Name of Representative:

.....
Mediator

..... *(Date)*