

MICHAEL DAWSON

MEDIATOR

Mediation Agreement

1 Appointment

The parties appoint Michael Dawson (*Mediator*) to mediate in the dispute between them.

The Mediator accepts the appointment on the terms and conditions set out below.

2 Non-adjudicative role of Mediator

The Mediator will be neutral and impartial.

The Mediator will not make decisions or give legal or other advice.

The parties will not be bound by any comments, opinions, suggestions, statements or recommendations put forward by the Mediator.

3 The Mediation

The Mediation, including preliminary steps, will be conducted in such manner as the Mediator considers appropriate having regard to the nature of the dispute.

4 Good Faith

Each party agrees to participate in the mediation and cooperate with the Mediator and each other during the Mediation process in good faith.

5 Confidentiality

The Mediator and the parties and all persons brought within the mediation by any party shall each sign and observe the Confidentiality Undertaking in the accompanying form. In particular, the parties agree that there shall not be introduced as evidence or relied on in any arbitral or judicial proceedings or otherwise disclosed:

- (a) exchanges whether oral, documentary or electronic passing between any of the parties and the Mediator or between any two or more of the parties within the mediation,

- (b) views expressed or suggestions or proposals made within the mediation by the Mediator or by any party in respect of a possible settlement of the dispute,
- (c) admissions made within the mediation by any party,
- (d) the fact that any party has indicated within the mediation willingness to accept any proposal for the settlement made by the Mediator or by any party,
- (e) paper and electronic documents brought into existence for the purpose of the mediation such as position papers or notes made within the mediation by the Mediator or by any party.

6 Without Prejudice

Every aspect of every communication within the mediation including communications within 5(a) to (e) above shall be without prejudice.

This clause in no way fetters the legitimate use in enforcement proceedings or otherwise of any written and signed settlement agreement reached in or as a result of this mediation. Any constraints on disclosure included in such settlement agreement will have effect in accordance with their terms.

7 Authority

Each party will have in attendance at the mediation a person who has authority to settle and resolve the dispute. In exceptional circumstances where that is not practical, a party will ensure the attendance at the mediation of a person who is able to communicate during the mediation with the person who is the responsible decision maker for that party and can authorise a settlement.

8 Private meetings with parties

Throughout the whole course of the mediation process the Mediator will be free, at the Mediator's unfettered discretion, to communicate and discuss the dispute privately with any of the parties or other persons brought within the mediation by them including their legal advisers provided always that the Mediator will preserve absolute secrecy of the content of any such communications and will not expressly or by implication convey any knowledge or impression of such content to any other party unless specifically authorised to do so.

9 No defamation

No statements or comments, whether written, oral or email 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 in bar to any such action.

10 Release of personal liability of Mediator

The parties jointly and severally release, discharge and indemnify the Mediator in respect of all liability of any kind whatsoever (whether involving negligence or not) which may be alleged to arise in connection with or to result from or to relate in any way to this mediation except in the case of fraud by the Mediator.

11 Parties' costs

Each party will pay its own costs and expenses of the mediation.

12 Mediator's fees and expenses

The parties agree to pay to the Mediator a flat fee of \$5,000 per day of Mediation (plus GST) and a fee of \$600 per hour (plus GST) for other attendances including preliminary conferences and preliminary consideration together with the cost of travelling and accommodation and other expenses of the mediation such as room hire on the following basis:

- (a) Such payment shall be shared equally between the parties.
- (b) For the purpose of sharing the payment of costs pursuant to this clause, where there are multiple parties, all who participate as a single group shall be deemed to constitute a single party. In any case of doubt or dispute the ruling of the Mediator on this point shall be final and binding.
- (c) Payment must be made within 14 days of the date of issue of the Mediator's Tax Invoice.
- (d) The Mediator can charge interest on unpaid fees at the rate prescribed from time to time for awards of interest under the *Civil Procedure Act 2005* (NSW) and the *Uniform Civil Procedure Rules*.

13 Execution in Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one Agreement. A party may execute this Agreement by signing any counterpart.

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Signature and date

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Signature and date

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Signature and date

Signature and date

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Signature and date

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Signature and date

Accepted and dated

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Mediator

CONFIDENTIALITY UNDERTAKING

As the condition of my being present at, participating in, or receiving information regarding the communications and the course of proceedings within this mediation, I agree with each of the parties to the dispute and with the Mediator that I will unless otherwise compelled by law preserve total confidentiality in relation to all communications and the course of proceedings within the mediation that may come to my knowledge passing between any of the parties and the Mediator or between any two or more of the parties within the mediation. This agreement does not restrict my freedom to disclose and discuss the course of proceedings and exchanges within the mediation within the organisation or legitimate field of intimacy of the party on whose behalf or at whose request I am present at the mediation including the advisers and insurers of that party **PROVIDED ALWAYS** that any such disclosures and discussions will only be on this same basis of confidentiality.

Dated

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..... NAME (Block letters) SIGNATURE
..... NAME (Block letters) SIGNATURE
..... NAME (Block letters) SIGNATURE
..... NAME (Block letters) SIGNATURE
.....

Accepted and dated

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Mediator