

## MEDIATION AGREEMENT

Date:

Parties:

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the Participants

and

JACQUELINE TOWNSEND

Mediator

### Appointment and functions of the Mediator

1. The Participants have appointed the Mediator, and the Mediator accepts the appointment, to mediate the Dispute, briefly set out in Schedule 1, in accordance with the terms of this agreement.
2. The Mediator will assist the Participants to identify the issues and to explore options for resolution of the Dispute.
3. The Mediator will not provide advice to the Participants nor impose a solution of the Dispute on the Participants.
4. The 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.
6. 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.
7. 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.

8. If, after consultation with the Participants, the Mediator forms the view that the Mediator 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.

#### **Costs and Mediator's fees**

9. Each Participant will meet their own costs of and in connection with the Mediation.
10. The Participants agree to pay the Mediator's fees and disbursements as specified in Schedule 2, in the proportions there stated regardless the outcome of the mediation.

#### **Authority & Representation**

11. Each party must 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.
12. All attendees at the mediation, including legal advisors, will sign an acknowledgement and undertaking as to confidentiality as specified in Schedule 3.

#### **Conduct of the Mediation**

13. The Participants agree to participate in the mediation.
14. Each Participant will comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Dispute.
15. 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 as to the manner in which the mediation should be conducted, 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 experts' report
  - iv. service on the Mediator of any such reports and outlines, and
  - v. communications between the Mediator and the Participants or their nominated representative.
16. The Mediator will communicate with a Participants as requested either orally or in writing.

17. The Mediator may as frequently as the Mediator deems appropriate meet with the Participants together or separately.
18. Information, whether oral or written disclosed in confidence by or on behalf of a Participant to the Mediator, will not be disclosed by the Mediator to any other Participant unless consent to such disclosure is provided to the Mediator.

### **Confidentiality**

19. The Participants and all other attendees at the mediation agree all communication and information exchanged during the mediation is confidential and will not be provided to a third party, unless required by law to do so.
20. The Mediator agrees to keep confidential all information furnished by a Participant to the Mediator save for, with the consent of the Participant who furnished such information.

### **Privilege**

21. All material provided to and communications with the Mediator for and during the Mediation is privileged and provided for the sole purpose of mediation.
22. The Participants and the Mediator will not disclose any privileged material nor rely upon privileged material or communication unless required by law to do so. The privileged material and communication include, but not limited to the following:
  - i. any settlement proposal
  - ii. the willingness of a Party to consider any such proposal
  - iii. any statement, admission or concession made by a Participant
  - iv. any statement or document made by the Mediator.

### **Termination**

23. A Participant may at any time terminate the Mediation by giving written notice terminating the mediation to the Mediator and to each Participant or their/its representative.
24. 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**

25. If required by law, the Participants are at liberty:
  - (i) to enforce the terms of a settlement agreement, and

- (ii) adduce evidence of and incidental to the settlement agreement including evidence from the Mediator and any other person engaged in the Mediation.
- 26. The Mediator will not accept appointment as an arbitrator nor act as an advocate in, nor provide advice to any Participant in any arbitral or judicial proceeding relating to the Dispute.
- 27. The Participants will not do anything to cause the Mediator to breach Clause 26.

**Exclusion of Liability and Indemnity**

- 28. 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.
- 29. Each party 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.
- 30. 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**

- 31. 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.

Signed

Witness

Signed

Witness

Signed

Witness

Signed

Witness

Schedule 1

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

**[insert brief description of the Dispute]**

## Schedule 2

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### Mediator's fees and expenses, exclusive of GST,

1	For all preparation including the preliminary conference	
	< 2 hours	nil
	> 2 hours	\$250 per hour
2	For the mediation	
	Half-day	\$1,800
	Full-day	\$3,600
3	Accommodation, meals and travel expenses (if applicable)	At cost
4	Long distance calls, couriers, etc. (if applicable)	nil
6	Allocation of Mediator's fees and expenses	
	All Participants equally – unless otherwise agreed	

**ACKNOWLEDGEMENT and UNDERTAKING**

and

and

(the Participants)

and

(the Mediator)

1. The undersigned acknowledge by their signatures that they attend the mediation on the basis of their agreement to the terms of clause 2 and 3 below.
2. Each of the undersigned undertakes to the Participants and the Mediator:
  - 2.1 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 (confidential information),
  - 2.2 not to act contrary to the undertaking in sub-paragraph 2.1 unless compelled by law to do so or with the consent of the Participant who disclosed the confidential information, and
  - 2.3 not to use confidential information for a purpose other than the 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 upon 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:
  - 3.1 any settlement proposal
  - 3.2 the willingness of a Participant to consider any such proposal
  - 3.3 any admission or concession made by a Participant, and
  - 3.4 any statement or document made by the Mediator.

Signed

Print name

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