

THE PARTIES in the case known as: [Example only]

hereby agree to the mediation of their dispute on the following terms and conditions:

Mediation Procedures

The mediation shall be held and conducted according to this Agreement to Mediate.

Mediator

The parties agree that either *Andrew Fraley* or *Bruce Bourne* will be the Mediator. The parties recognise that the Mediator is an independent contractor, has no financial or other interest in the outcome of the mediation and has no power or authority to render a binding decision or award. The parties agree the Mediator shall establish the order and procedures for the Mediation session and will supply to the mediator such information that the mediator may reasonably require in order to better understand the nature of the dispute.

Mediation Fees

The Mediation Fee will be [see fees] per party for up to three hours; an additional fee of [see fees] per party will be charged thereafter for each additional hour or part thereof. Mediator travel time and preparation time is included. Incidental expenses will be charged at cost. The parties agree that the total cost of the mediation will be borne equally by the parties unless, as a result of a mediated settlement, it is agreed otherwise. Settlement or cancellation less than 21 days before the mediation will be chargeable at the full rate.

Consulting with Legal Advisers

Any party not represented by a legal adviser or in appropriate cases another professional adviser is advised to consult one before, during and after the Mediation Session and before finalising an agreement reached pursuant to the Mediation. The parties recognise that Mediator is not giving legal advice or acting as an advocate for any of the parties or analysing or protecting any party's legal rights.

Private Sessions

The Mediator may hold private sessions with one party at a time. These private sessions are designed to improve the Mediator's understanding of the party's position. Information gained by the Mediator through such a session is confidential unless (a) it is in any event publicly available or (b) the Mediator is specifically authorised by that party to disclose it

Confidentiality

The parties recognise that the Mediation Session is for the purpose of attempting to achieve a negotiated settlement and as such, all information provided during the Mediation Session is without prejudice and will be inadmissible in any litigation or arbitration of the dispute. Evidence which is otherwise admissible shall not be rendered inadmissible as a result of its use in the Mediation Session. The parties will not subpoena or otherwise require the Mediator to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings.

All documents, statements, information and other material produced or given for or during the mediation whether in writing or orally, shall be held in confidence by the parties and shall be used solely for the purpose of the mediation. At the termination of the mediation all such material shall be returned to the originating party or forthwith destroyed at their option.

Termination of the Mediation Session

Either of the parties or the Mediator shall be entitled in their absolute discretion to terminate a Mediation Session at any time without giving reason therefor.

General Conditions

- a) Clause 6(a) and 6(b) in no way fetters the legitimate use in enforcement proceedings or otherwise of any written or 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.
- b) 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 used in evidence for any such action.
- c) The parties jointly and severally release and discharge the Mediator in respect of all liability of any kind whatsoever which may be alleged to arise in connection with or to relate in any way to this mediation.
- d) The parties confirm that they or their representatives who will appear on their behalf at the Mediation sessions will have the authority to commit and bind them to any agreement arrived at through mediation.

Signed:

Agreement to Mediate.pdf