

# Mediation Agreement

This agreement dated..... between the following parties:-

.....

.....

(name and address)

.....

.....

(name and address)

and

Grahame James Berecny of at Edmund Barton Chambers, Level 44 MLC Centre,  
Martin Place, Sydney.

## Appointment of Mediator

1. The parties appoint the mediator to mediate the dispute described in the Schedule (the Dispute) in accordance with the terms of this agreement.
2. The mediator accepts the appointment to mediate the Dispute at the time and place set out in Schedule 2 or at another time and place agreed to by the parties.

## Role of the Mediator

3. The mediator will assist the parties to attempt to resolve the Dispute by:
  - systematically identifying the issues in dispute;
  - developing alternatives and options for the resolution of the Dispute;
  - exploring the usefulness of each alternative; and
  - seeking to achieve a resolution which is acceptable to the parties.
4. The mediator will be neutral and impartial.
5. The mediator will not:
  - give legal or other professional advice to any party; or
  - impose a result on any party.

6. The parties will not be bound by, and will not rely on any advice, opinions, recommendations, decisions or statements put forward by the mediator.
7. The mediator can meet with the parties jointly or separately.

### **Conflict of Interest**

8. The mediator must, prior to the commencement of the mediation, disclose to the parties to the best of the mediator's knowledge any prior dealings with any of the parties, or at the mediation, any person present thereat, as well as any interest in the Dispute.
9. 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 must immediately inform the parties of these circumstances. The parties will then decide whether the mediation will continue with the mediator or with a new mediator appointed by the parties.

### **Co-operation by the Parties and Preliminary Conference**

10. Each party agrees to take part in the mediation in good faith and to co-operate with the mediator and each other during the mediation.
11. The parties agree to ensure that they, and any advisers who will be attending the mediation, will participate in a preliminary conference with the mediator to discuss the process prior to the mediation if requested by the mediator.
12. Each party will agree to comply with any reasonable direction given by the mediator at the preliminary conference.
13. If a preliminary conference is not held the parties or their advisers will agree between themselves and with the mediator about an exchange of any material and the preparation of a synopsis and chronology of the Dispute.

### **Representation at the Mediation, and Authority to Settle**

14. Each party agrees to be represented at the mediation by a person who will have the appropriate level of authority to settle. If that is not reasonably practical, each party must have in attendance at the mediation a person who, during the mediation, is able to communicate with that party's decision maker for the purpose of obtaining authority to settle.
15. At the mediation each party may have one or more persons to assist or advise them.

## **Confidentiality**

16. The fact that the parties are in mediation is not confidential.
17. Each party agrees to ensure that any person who attends the mediation as a support person, or in another capacity, signs the Confidentiality Agreement attached to this Agreement and provide it to the mediator, as a condition of their being allowed to attend the mediation.
18. All documents created for the purpose of the mediation and all matters discussed throughout the mediation process are confidential.
19. The mediator must not disclose information provided by a party to another party in the absence of the first party without the consent of the party who provided the information, unless by law to do so.
20. A party will not disclose to any other party any confidential communication the first party had with the mediator in the absence of other parties without first obtaining permission from the mediator to disclose that confidential information
21. The parties and the mediator agree not to disclose to anyone not involved in the mediation process any information or documentation received by them in preparation for, or during, the mediation process, and not to use that information or documentation for any purpose except the mediation, except to the extent that;
  - it is specified in Schedule 3;
  - it is required by law;
  - it is required for the purpose of obtaining legal advice; or
  - the information becomes public knowledge otherwise than by reason of a breach of this agreement.
22. If it becomes necessary to disclose any information or documentation in accordance with clause 21 the disclosing party must ensure that any person receiving information or documentation, and their legal representative, if there is one, signs a Confidentiality Agreement in the form attached to this agreement before the information or documentation is disclosed.
23. If a party produces a document at the mediation that otherwise would be privileged from production or from admission into evidence, the party does not waive that privilege by producing the document.

## **Termination of the Mediation**

24. A party may terminate at any time after consultation with the mediator.
25. If a party wishes to terminate an adjourned mediation they shall give written notice to the other parties and the mediator of such intention.
26. The mediator may terminate his involvement in the mediation if, after consultation with the parties, he is of the opinion he is unable to assist the parties to achieve resolution of the Dispute.

## **Settlement**

27. If agreement is reached at the mediation, the terms of the agreement must be written down and signed by the parties before they leave the mediation.

## **Enforcement of the Settlement Agreement**

28. Any party may enforce the terms of the settlement agreement by judicial proceedings.
29. For the purposes of paragraph 28, any party may call evidence of the settlement agreement including evidence from the mediator and any other person engaged in the mediation.
- 30.

## **Exclusion of Liability and Indemnity**

30. The parties agree that the mediator will not be liable to any party for any act or omission in the performance of the mediator's duties and obligations under this agreement, unless the act or omission is fraudulent.
31. The parties jointly and severally release and indemnify the mediator in relation to any loss, damage or liability of any kind whatsoever, whether or not involving negligence, which may be alleged to arise in connection with or to result from or relate in any way to this mediation.

## **Costs and Expenses of the Mediation**

32. The parties jointly and severally agree to pay to the mediator a fee of \$4000.00 plus GST per day (up to 8 hours) and \$500.00 plus GST per hour beyond 8 hours and for other attendances including preliminary conferences and preliminary consideration together with travelling and accommodation costs. The mediator reserves the right to reduce the costs in appropriate circumstances. Such payment will be shared equally between the parties or in such proportion agreed to by the parties.

33. The parties will provide such security for the mediator's fees as he reasonably requests. The fees will be paid in the time frame specified in the invoice.
34. Interest will be paid on any sum outstanding after the date of payment set out in the invoice at the prevailing rate under the Uniform Civil Procedure Act and Rules as applying from time to time.
35. The parties will pay their own costs and expenses (including hire of the Mediation rooms) of the mediation unless otherwise agreed.
36. If the mediation is vacated more than 3 days but less than 7 days prior to the mediation the mediation fee, exclusive of any preparation already undertaken is reduced by 50%. Notice of a vacated date given more than 7 days prior to the mediation will not be subject to any fees. If notice of the mediation is given less than 3 days before the mediation the full mediation fee is payable together with any preparation fee.

.....  
signature

.....  
signature

.....  
name(print)

.....  
name(print)

.....  
date

.....  
date

Accepted.

.....  
Mediator

.....  
Date

Liability limited by a scheme approved under Professional Standards Legislation

## **Schedule 1**

(Brief description of the dispute)

## **Schedule 2**

Time.....

Date.....

Venue.....

## **Schedule 3**

Persons/classes of persons to whom details of the mediation may be disclosed: