

## **MEDIATION AGREEMENT**

### The Parties

Between

And

\_\_\_\_\_

Mediator:

### **THE MEDIATION PROCESS**

1. Mediation is a process in which an independent neutral person (the Mediator) assists the parties to a dispute to explore issues relating to and options for the resolution of the dispute.

### **APPOINTMENT OF MEDIATOR**

2. A dispute has arisen between the parties (“the dispute”).
3. The Mediator has been appointed by the parties to mediate the dispute. The parties and the Mediator agree that the Mediator will mediate the dispute. This agreement governs the mediation.

### **ROLE OF MEDIATOR**

4. The Mediator will be independent and impartial. The Mediator will assist the parties to explore options for the possible resolution of the dispute by helping the parties to:
  - Isolate the issues in dispute;
  - Identify the interests of each party;
  - Develop options for the resolution of the issues; • Negotiate a resolution.
5. The Mediator will not:
  - Make decisions for any party;
  - Impose a solution on the parties;
  - Give professional advice (including legal advice) to any party;
  - Accept any appointment in relation to any proceedings concerning the dispute.

### **LEGAL REPRESENTATION**

6. Each party may be legally represented at the mediation.

## **CONFLICTS OF INTEREST**

7. Prior to the commencement of the mediation, the Mediator shall disclose to the parties to the best of her knowledge any prior dealings with any of the parties and/or any interest in the dispute.
8. If, during the course of the mediation, the Mediator becomes aware of any facts that may reasonably be considered to affect her capacity to act impartially, she will immediately inform the parties of such circumstances. The parties and the mediator will then decide whether or not the mediation should continue.

## **COMMITMENT TO PROCESS**

9. Each party shall co-operate with the Mediator and each other and will use their best endeavours to in good faith resolve the dispute.

## **PRELIMINARY CONFERENCE**

10. Prior to the mediation the parties or their legal representatives will agree between themselves and with the Mediator:
  - The date and start time for the mediation;
  - The venue for the mediation;
  - The exchange and/or presentation of any documentation;
  - Who will be present at the mediation including the parties, any support persons and any representatives, legal or otherwise;
  - Any other necessary matters.

## **AUTHORITY TO SETTLE**

11. Each party or their representative/s at the mediation will have full authority to settle the dispute.

## **COMMUNICATION DURING THE MEDIATION**

12. The Mediator may communicate privately regarding the dispute with any of the parties or other persons involved in the mediation at any time provided such communications are kept confidential by the mediator unless authority to disclose to the other party is given.
13. The mediation shall be entirely without prejudice.
14. The mediation shall be entirely confidential. There will be no disclosure outside the mediation of any information or documentation disclosed during the mediation, including the preliminary steps, by any party or by the Mediator, except for the purpose of obtaining professional advice, unless that party or the Mediator is required to do so by order of a court or by law.
15. The following are privileged and will not be relied on or introduced as evidence in any judicial, arbitration or tribunal proceeding:
  - Any settlement proposal made by a party or the Mediator;
  - Any view expressed on a settlement proposal by a party or the Mediator;
  - Any admissions or concessions made in the course of the mediation;

- Any exchanges (oral or documentary) made by a party or the Mediator;
  - Any information or documents whatsoever prepared for the mediation including notes made in the course of the mediation by any party or the Mediator.
16. The parties will not subpoena the Mediator as a witness in any court, tribunal or arbitration proceeding unless directed to do so by a judge, Tribunal or Arbitrator.
17. Non-parties present at any time during the mediation will sign an appropriate confidentiality agreement.

### **TERMINATION**

18. A party may terminate their involvement in the mediation at any time after consultation with the Mediator.
19. The Mediator may terminate her involvement in the mediation if after consultation with the parties the Mediator considers he is unable to achieve a resolution of the dispute.

### **SETTLEMENT OF THE DISPUTE**

20. If the dispute is resolved by the parties in the mediation then the agreed terms will be recorded in writing and signed by all parties (“the agreement”) before they leave the mediation or, if time does not permit completion of a written agreement on the day of the mediation, as soon as is practicable thereafter. No settlement reached at mediation shall be binding unless it is recorded in writing and signed by the parties.

### **ENFORCEMENT**

21. The parties will give effect to and implement the agreement.
22. Any party may enforce the terms of the agreement by judicial proceeding. For the purpose of such proceedings, evidence may be called of the agreement.

### **EXCLUSION OF LIABILITY AND INDEMNITY**

23. Each party severally releases, discharges and identifies the mediator in respect of all liability of any kind whatsoever (whether involving negligence or not) to that party which may be alleged or arise in connection with or to result from or to relate in any way to this mediation; and the parties jointly and severally release, discharge and indemnify the mediator in respect of any such liability to third parties.

### **DEFAMATION**

24. The parties and the Mediator agree that no statements or comments, whether written or oral, made or used by them or their representatives during 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.

### **COSTS**

25. The parties agree to share equally in the payment to the Mediator of a mediation fee. The mediation fee will be at the rate of \$400 - \$450 per hour plus GST (depending upon the complexity of the matter) for all attendances involved in the mediation, including setting up the mediation and preliminary conferences.

26. The mediation fee shall be paid within 7 days after the conclusion of the mediation.

27. Each party otherwise shall pay their own costs and expenses incidental to the mediation.

Dated this                      day of                      2015

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Signature of

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Signature of

\_\_\_\_\_  
Signature of  
Counsel for

\_\_\_\_\_  
Signature of  
Counsel for

\_\_\_\_\_  
Signature of Russell Buchanan/Annette Gray  
Mediator

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