



Mediation Agreement

This agreement ("the Agreement") is made on the date specified in Item 1 of the Schedule between the parties listed in Item 2 in the Schedule (each a "party" and together the "parties") and **David Lewis Baker** ("the mediator").

Recitals

- A. The parties wish to resolve a dispute between them by way of mediation. The dispute is described in item 3 of the Schedule ("the dispute").
- B. The parties have requested the mediator, and the mediator has agreed, to meet with the parties or their representatives to assist them to resolve the dispute.
- C. The parties and the mediator agree to comply with the terms and conditions of this Agreement.

Operative Provisions

1. Appointment

The parties appoint the mediator to mediate the dispute. The mediator accepts the appointment on the terms set out in this Agreement.

2. The Mediator

- 2.1. The mediator will be neutral and impartial.
- 2.2. If the mediator becomes aware of any circumstance that might reasonably be considered to adversely affect the mediator's capacity to act impartially, the mediator will inform the parties as soon as possible and the provisions of clause 6 of the Agreement will apply, unless the parties agree otherwise.
- 2.3. The mediator will not make decisions or give legal or other advice and the parties will not be bound by any action of the mediator.

3. The Mediation Process

- 3.1. The mediation shall be conducted in such manner as the mediator considers appropriate having regard to the nature of the dispute. The mediation shall be fixed for a time, date and place agreeable to the parties and the mediator.
- 3.2. The parties, their representatives and the mediator may hold a pre-mediation conference to decide upon a timetable for exchange of documents and statements of issues.
- 3.3. The mediator is authorised to conduct joint and separate meetings with the parties.

- 3.4. Each party agrees to participate in the mediation and cooperate with the mediator and each other in good faith.
- 3.5. If a party is an individual, that individual must attend the mediation. If the party is a company, an authorised company representative who is authorised to settle the dispute on behalf of the company must attend the mediation.
- 3.6. Each party is entitled to bring its legal representative to the mediation. Unless the parties agree otherwise, at least seven (7) days prior to the mediation, each party shall provide an attendee list to the mediator and the other party.
- 3.7. Throughout the course of the mediation, each party and their representatives may meet separately with the mediator. Any information disclosed to the mediator in those separate sessions will not be disclosed to the other parties by the mediator without the prior authorisation of the disclosing party.

4. Mediators Fee and Costs

- 4.1. Unless otherwise agreed, the parties shall share equally all costs relating to the mediation, which includes room hire, the mediator's fee for all the time expended by the mediator in connection with the mediation, the reasonable travel and accommodation costs of the mediator if the mediation is not in Sydney and any other disbursements agreed by the parties.
- 4.2. On the date of this Agreement, the mediator may require the parties to pay their half share of a security payment for the conduct of the mediation, the amount of which appears in item 4 of the Schedule. The mediator will apply the amount so paid towards the costs incurred by the mediator or the mediator's fee.
- 4.3. Each party shall bear its own costs of the mediation. The parties are severally liable to the mediator for all costs relating to the mediation.
- 4.4. The parties agree to pay the mediator the fees (plus GST) as specified in Item 5 of the Schedule.
- 4.5. If the mediation is vacated:
 - 4.5.1. more than 3 days but less than 7 days before the scheduled mediation date, the mediator agrees to reduce the daily fee for each day set aside for the mediation by 50%;
 - 4.5.2. more than 7 days before the scheduled mediation date, the mediator agrees not to charge a fee for the days set aside for the mediation;
 - 4.5.3. less than 3 days before the scheduled mediation date, the parties agree that the full mediation fee will be payable.
 - 4.5.4. This is exclusive of any preparation fee for work already undertaken, which shall be payable upon termination.

5. Confidentiality and Restriction on Actions

- 5.1. The parties and the mediator agree that as a condition of being present or participating in the mediation, they will preserve confidentiality in relation to any and all information disclosed during the course of the mediation and preparation for it. This confidentiality obligation will not be breached if disclosure is made under legal compulsion or by a party for the purpose of obtaining legal, financial or insurance advice, provided that those advisers are under a similar confidentiality obligation.
- 5.2. The mediation shall be conducted on a “without prejudice” basis and all documents produced and exchanged by the parties shall be marked accordingly.
- 5.3. The parties agree not to call upon or seek to subpoena the mediator to give evidence or to rely on or introduce as evidence in arbitral or judicial proceedings:
 - 5.3.1. views expressed or suggestions made by the mediator or either party with respect to a possible settlement of the dispute;
 - 5.3.2. admissions made by either party;
 - 5.3.3. proposals for settlement of the dispute made by the mediator or either party;
 - 5.3.4. the fact that either party has indicated willingness to accept a proposal for settlement made by the mediator;
 - 5.3.5. documents presented at or in connection with the mediation, such as position papers or notes made within the mediation by the mediator or by any party, unless those documents are otherwise discoverable;
 - 5.3.6. any matter arising in connection with the mediation.
- 5.4. The parties agree not to seek to join the mediator or any officer, employee, servant or agent of the mediator in any legal proceedings brought by third parties, whether or not the proceedings relate to this dispute.
- 5.5. Every aspect of every communication within the mediation shall be "without prejudice".
- 5.6. No statements or comments, whether written or oral, made or used by the parties or their representatives or the mediator in preparation for or in the course of 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 to defend any such action.

6. Termination of the Mediation

- 6.1. The mediation may be terminated:
 - 6.1.1. by a party giving written notice to each party to the mediation and the mediator;
 - 6.1.2. upon execution of a settlement agreement in respect of the dispute; or
 - 6.1.3. by the mediator giving written notification to the parties if, after consultation with the parties, the mediator forms the view that the mediator will be unable, for whatever reason to assist the parties to achieve resolution of the dispute.

6.2. In the event of termination, clause 4.5 in relation to fees and costs shall apply.

7. Release

The parties release and discharge the mediator from any liability of any kind whatsoever and indemnify him from and against any claim which may arise in connection with or resulting from the mediator's appointment, or any act or omission pursuant to the mediation.

8. 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.

9. Entire Agreement, Governing Law and Jurisdiction

This Agreement represents the entire agreement between the parties and is governed by the laws of New South Wales. The parties submit to the courts of that jurisdiction.

Signed by the parties

Signature and date

Signature and date

Signature and date

Signature and date

Signed by the Mediator

Signature of mediator and date

Schedule

Item 1: Date of this Agreement

Item 2: Parties

Item 3: Description of the dispute

Item 4: Security Payment (clause 4.2)

Item 5: Mediator's fees

Amount payable for each day of the mediation (or part thereof):

[\$Insert daily amount]

Hourly fee for preparation time and other attendances including preliminary conferences:

[\$Insert hourly rate]

Unless otherwise stated all fees indicated above exclude GST.