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# MEDIATION AGREEMENT

## SCHEDULE OF PARTICULARS

**DATE OF THIS AGREEMENT:**

**NAMES OF PARTIES AND THEIR COUNSEL:**

**Party One:**

**Counsel for Party One:**

**Party Two:**

**Counsel for Party Two:**

**Party Three:**

**Counsel for Party Three:**

**NAME OF MEDIATOR:**

**VENUE FOR MEDIATION:**

**START TIME:**

**BRIEF DESCRIPTION OF DISPUTE:**

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**AGREEMENT:**

1. The parties agree as set out in the attached Mediation Agreement.
2. Counsel for the parties agree, as set out in Paragraphs 3 and 8 of the attached Mediation Agreement.

**EXECUTION:**

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Party One

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Party Two

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Party Three

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Counsel for Party One

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Counsel for Party Two

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Counsel for Party Three

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Mediator

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## **INTRODUCTION**

- A.
- B.

## **AGREEMENT**

### **1. Functions of the Mediator**

- 1.1. The Mediator will assist the parties to explore and, if possible, resolve the dispute by agreement reached between them.
- 1.2. The Mediator will be neutral and impartial at all times.
- 1.3. The Mediator will not give legal or other professional advice to any party.
- 1.4. The Mediator will not make decisions for a party or impose a solution of the dispute on the parties.
- 1.5. The Mediator is not instructed by the parties or their legal advisors (if any) as a legal advisor in any capacity and accordingly all parties to this agreement agree that the Lawyers and Conveyancers Act 2008 does not apply to the services provided by Mediator.

### **2. Conduct of the Mediation**

- 2.1. The parties acknowledge that they enter the mediation with a commitment to resolve the dispute by mediation and that they will co-operate and negotiate in all good faith with the Mediator and each other in the conduct of the mediation to achieve a resolution.
- 2.2. The parties will meet the Mediator at a time and date arranged and agreed by them.
- 2.3. Prior to the mediation the parties will agree either at a preliminary conference or by telephone or e-mail between themselves and with the Mediator as to:
  - (a) the collation, exchange and presentation of any documentation necessary to enable the mediation to take place;
  - (b) the presence of any persons other than the Mediator, Counsel and the parties at the mediation; and
  - (c) the submission to the Mediator for their confidential information of a short written summary of their case including, if they wish, a suggested proposal for settlement.
- 2.4. By attending the mediation the parties warrant that they have full authority to settle the dispute.

### **3. Privilege and Confidentiality**

- 3.1. The Mediator and the parties and all persons brought into the mediation by either party, agree that the following are privileged and that they will not be disclosed or introduced as evidence in any arbitration, tribunal or Court proceedings:
  - (a) any exchanges whether oral or documentary concerning the dispute passing between any of the parties and the Mediator or between any two or more of the parties within the mediation;
  - (b) any views expressed or suggestions or proposals made within the mediation by the Mediator or any party in respect of a possible settlement of the dispute;

- (c) any admissions made within the mediation by any party;
  - (d) the fact that any party has indicated within the mediation a willingness to accept any proposal for settlement made by the Mediator or by any other party;
  - (e) any documents brought into existence for the purpose of the mediation such as issues, statements or notes made within the mediation by the Mediator or by any party.
- 3.2. The parties agree that the Mediator will not be subpoenaed as a witness in any Court, tribunal or arbitration proceedings.
- 3.3. All non-parties brought into the mediation by a party shall sign a confidentiality agreement.
- 3.4. Every aspect of and communication within the mediation shall be without prejudice and the parties and the Mediator agree that all information disclosed by or to them during the mediation (and including any preliminary meetings) shall be kept absolutely confidential and not be used for any purpose other than the mediation unless required by law subject only to a party disclosing information or documents obtained during the mediation to a person not present at the mediation where the party is consulting the person in order to obtain professional advice.
- 3.5. Any party so disclosing documents or information in such circumstances must inform the professional adviser of the confidentiality attaching to such documents or information.
- 4. Communication between the Mediator and a party**
- 4.1. The parties will not be bound by any comments, opinions, suggestions, statements or recommendations made by the Mediator.
- 4.2. The Mediator may communicate privately, or as the Mediator deems appropriate, with any of the parties or other persons brought into the mediation by them, provided always that the content of any such communications will not be disclosed by the Mediator to any other party, unless he is specifically authorised to do so.
- 5. Settlement**
- 5.1. The parties agree that if an agreement is reached in the mediation or as a result of the mediation a settlement agreement will be prepared and signed by the parties. They undertake to give effect to and implement such settlement agreement in accordance with its terms. The mediation will be terminated upon execution of a settlement agreement in respect of the dispute.
- 6. Enforcement**
- 6.1. The parties agree that if any settlement is reached at mediation then any party shall be at liberty to enforce the terms of the settlement agreement by judicial proceedings and any written and signed settlement agreement reached in or as a result of this mediation may be produced to that Court or tribunal.
- 7. Exclusion of liability and indemnity**
- 7.1. The parties 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 result from or to relate in any way to this mediation.