

AGREEMENT TO MEDIATE

DATE: **2017**

FIRST PARTY:

SECOND PARTY:

THIRD PARTY:

FOURTH PARTY:

FIFTH PARTY:

SIXTH PARTY:

SEVENTH PARTY:

EIGHTH PARTY:

MEDIATOR : NIGEL DUNLOP

Nigel Dunlop
Barrister / Mediator
Nelson

IT IS AGREED:

Appointment of Mediator

1. Nigel Dunlop is appointed to mediate between the parties.

Scope of Issues

2. The mediation will relate to the issues referred to in Schedule One.

Role of Parties and Mediator

3. The mediator will work with the parties to help them explore and reach a mutually acceptable resolution of some or all of the issues in dispute. He will not decide the dispute for them nor give them legal advice. As participation in the mediation is voluntary, a party can withdraw from the mediation at any time but only after that party has first discussed their intention to withdraw with the mediator.
4. The mediator may talk in private to each party individually before and during the mediation conference but will keep the content of such sessions confidential between him and the party concerned, unless otherwise authorised by the party.

Conduct of the Parties

5. The parties will mediate in good faith. They will co-operate with the mediator. They will be honest with the mediator and with each other. They certify that they have authority to settle the dispute at the mediation conference without having to confer with anyone outside the conference.
6. The parties will comply with the reasonable requests and directions of the mediator in relation to the conduct of the mediation.

Readiness for Mediation

7. The Parties certify that the case is now ready to proceed to a mediation conference.

Termination of Mediation

8. The mediator may terminate the mediation if for ethical, professional or other sound reasons the mediator considers it is not proper or appropriate to continue the mediation.

Legal Representation

9. The parties may be legally represented.

Confidentiality

10. The mediator and the parties and any other signatories to this agreement will keep confidential between themselves and professional advisors all information and views, whether written or spoken, presented or generated in the course of the mediation, unless required to do so by law or as may be necessary to enforce a settlement agreement resulting from this mediation or to enforce the payment of costs under this agreement. All attendees at the mediation conference who are not signatories to this agreement will be required to sign a confidentiality agreement.
11. The mediator may breach confidentiality if the mediator believes that is necessary for the prevention or detection of offences or to prevent or lessen a threat to the life, health or safety of any person.

Privilege

12. The parties agree that views expressed and information presented in the course of the mediation process, whether oral or in writing, are privileged unless already known by or in the possession of both parties and shall not be referred to or placed in evidence by the parties or the mediator in court, in an arbitration or in any other adjudicative or disciplinary process, unless the parties agree or except so far as may be necessary to enforce a settlement agreement resulting from this mediation or to enforce the payment of costs under this agreement.

Record of Settlement

13. If settlement is reached at the mediation conference, all the terms of settlement shall be written down in agreement form and signed by the parties before they leave the conference. Should detailed and formal documentation be required to record the agreement of the parties, a heads of agreement will suffice for the purposes of this clause. The settlement agreement or heads of agreement may only subsequently be altered by further written agreement. They will be subject to the same confidentiality and privilege provisions as are referred to in clauses 10 -12 unless otherwise agreed to in writing.

Authority to Settle

14. The Parties certify, that before the mediation conference ends, their negotiators at the mediation conference will have, or be able to obtain, authority to enter into a final, binding and enforceable settlement agreement pursuant to paragraph 13.

Exclusion of liability

15. The mediator shall not be liable to a party for any act or omission in the performance or purported performance of his obligations under this agreement, including advice or assistance given to the parties in relation to the mediation, except in the case of absence of good faith. The parties jointly and severally indemnify the mediator against any claim for any act or omission in the performance of his obligations under this agreement except in the case of absence of good faith.
16. No party to this agreement or other participant in the mediation shall make a claim in defamation against the mediator or each other in respect of any oral statement or any document presented during the course of the mediation process.

Venue and Date

17. The mediation conference will commence at

Persons Present

18. Only the following persons will be entitled to be present during the mediation conference:
 - The mediator
 -

If any party wishes any other person to be present then the prior consent of the mediator and other party or parties shall be required.

Costs

19. The mediator will be paid in accordance with Schedule Two. Liability for payment of the mediator is to be evenly divided between the parties (subject to clause 5 of Schedule 2).
20. The parties' own costs and any other expenses, not set out in Schedule Two, are payable by the party who incurs them.

End of Mediation

21. The mediation is deemed to end when one of the following first occurs:
 - (a) a party withdraws from the mediation in accordance with paragraph 3 above; or
 - (b) the mediator terminates the mediation in terms of paragraph 8 above; or

- (c) the parties have signed a settlement agreement resulting from the mediation conference in accordance with paragraph 13 above.

Variation / Cancellation

22. This agreement may only be varied or cancelled by written agreement.

Retention of Records

23. The mediator is not obliged to retain any records at the conclusion of the mediation.

Counterparts

24. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

SIGNED by the mediator

Signature:.....
Name: Nigel Johnston Dunlop

SIGNED by or on behalf of)
the First Party)

Signature:.....
Name:

SIGNED by or on behalf of)
the Second Party)

Signature:
Name:

SIGNED by or on behalf of)
the Third Party)

Signature:
Name:

SIGNED by or on behalf of)
the Fourth Party)

Signature:
Name:

SIGNED by or on behalf of)
the Fifth Party)

Signature:
Name:

SIGNED by or on behalf of)
the Sixth Party)

Signature:
Name:

SIGNED by or on behalf of)
the Seventh Party)

Signature:
Name:

SIGNED by or on behalf of)
the Eighth Party)

Signature:
Name:

SCHEDULE ONE

All matters in dispute between the parties relating to

SCHEDULE TWO

Payment of Mediator

1. The mediator will be paid a fixed sum of \$3,500 + GST. If the mediation conference takes less than 4 hours, the fee will be reduced to \$1750 + GST. If the mediation conference takes more than 10 hours the mediator will be paid an additional \$350 + GST for every hour the mediation conference exceeds 12 hours (calculated according to 15 minute intervals).
2. Such fee covers the mediation conference together with all necessary and reasonable incidental attendances including administration, communication with the parties and their representatives, discovery, preparation and finalisation but does not cover payment due pursuant to clauses 3 and 4 (if applicable.)
3. The mediator shall be paid for travelling time at the rate of \$175 (exclusive of GST) per hour (if applicable).
4. The parties shall pay for all miscellaneous expenses such as refreshments and room hire and for the travel and reasonable accommodation expenses of the mediator (if applicable).
5. In the event that one or more of the parties cancels or postpones the mediation conference within 15 working days of the agreed date, the mediator may charge to that party or those parties a booking fee of up to \$1,000 (exclusive of GST) in order to compensate him both for work undertaken and other work foregone, together with any irrecoverable costs already incurred of a type referred to in clause 4. Only those parties who so cancel or postpone may be held liable under this clause, except that where the parties dispute responsibility for cancellation or postponement the mediator may charge the fee to such party or parties as he decides after consultation with the parties. In the case of the fee being charged to more than one party, it will be evenly divided between those parties. Clause 6, with necessary changes applies to any invoice rendered for a booking fee or costs incurred.
6. Payment to the mediator shall be made no later than 28 days from date of an invoice rendered pursuant to clauses 1-5. The invoice shall not be rendered until completion of the mediation conference unless a conference does not take place. Should payment not be made in full within 28 days then interest shall accrue on any amount outstanding at the rate of 25% per annum calculated daily. The liable party will additionally be liable to the mediator for

the reasonable expense that may be incurred by the mediator in recovering the amount outstanding.