

## **MEDIATION AGREEMENT**

**THIS AGREEMENT** is made on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_

**BETWEEN** the following disputing parties ("the parties")

|    |         |  |
|----|---------|--|
| 1. | name    |  |
|    | address |  |
| 2. | name    |  |
|    | address |  |
| 3. | name    |  |
|    | address |  |
| 4. | name    |  |
|    | address |  |

**AND** David Desmond Knoll AM, (the "mediator") of 9<sup>th</sup> floor, Selborne Chambers, 174 Phillip St, Sydney NSW 2000.

### **MEDIATION PROCESS**

1. The "mediation" process referred to in this agreement is a voluntary process by which the parties, with the assistance of the mediator, systematically isolate issues in dispute, develop options for the resolution of those issues, explore the usefulness of those options and consider alternatives with the aim of reaching an agreement that accommodates the interests and needs of the parties and has the effect of resolving the dispute or agreeing on some of the issues.

## **APPOINTMENT OF MEDIATOR**

2. The parties appoint the mediator to mediate the dispute between them in accordance with the terms of this agreement. The dispute is briefly described in Schedule 1 to this agreement ("the dispute"). The mediator accepts that appointment.

## **ROLE OF THE MEDIATOR**

3. The mediator will:
  - 3.1 be neutral and impartial;
  - 3.2 not make decisions for a party or impose a solution on the parties;
  - 3.3 not bind the parties by any comments, suggestions or statements made by the mediator;
  - 3.4 not give legal or professional advice to any party; and
  - 3.5 throughout the mediation, determine when the mediator may meet with the parties together or separately.

## **COMMITMENT TO MEDIATION**

4. The parties each agree to: (a) co-operate with the mediator and the other parties in the mediation and (b) negotiate in good faith towards achieving a resolution of the dispute.
5. The parties acknowledge each other's right to be heard and agree to behave with courtesy and respect towards every person participating in the mediation.
6. Once a date or dates are set for the mediation (under clause 15.3) any change may only be made with the mediator's and all parties' consent.

## **CONFLICT OF INTEREST**

7. 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 as well as any interest in the dispute.

**CONFIDENTIALITY**

8. The mediator and the parties agree to keep confidential all information and documents concerning the dispute which are disclosed during the course of the mediation. Any disclosures, exchanges and all aspects of any communication occurring within the mediation shall be "without prejudice".
9. Subject to court order, the parties and the mediator agree that the following will be privileged and will not be disclosed or be the subject of a subpoena to give evidence or produce documents in any proceedings in respect of the dispute:
  - 9.1 any settlement proposal made in the course of attempting to resolve the dispute, whether such proposal be made by a party or the mediator;
  - 9.2 the willingness of a party to consider or accept any such settlement proposal;
  - 9.3 any admission or concession made within the mediation by a party;
  - 9.4 any views expressed, suggestions made or exchanges passing (oral or documentary) between any of the parties and the mediator or between the parties themselves;
  - 9.5 documents brought into existence for the purpose of the mediation that have not been or are incapable of being discovered or subpoenaed for the purposes of the proceedings.
10. If a party serves the mediator with a subpoena to give evidence concerning anything said or done in the course of the mediation, or to produce documents created for the purpose of or during the mediation, that party will:
  - 10.1 indemnify the mediator for all costs and expenses incurred by him (including the mediator's legal costs and any legal costs the mediator is ordered to pay to any other person such legal costs to be assessed on a solicitor client basis) in connection with the subpoena, the giving of evidence or the production of the documents; and
  - 10.2 pay the mediator at the hourly rate specified in Schedule 1 for the time expended by the mediator in connection with the subpoena, the giving of evidence or the production of documents.

## **COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES**

11. Any information disclosed by a party or its representative to the mediator in private is to be treated as confidential by the mediator unless the party on whose behalf the disclosure is made authorises the mediator to disclose the information.

## **AUTHORITY TO SETTLE**

12. If a party is a natural person, he or she shall attend the mediation or, if unable to be present, have present at the mediation a representative with full authority to negotiate and settle the dispute and to make an agreement binding on the party.
13. A party who is not a natural person, such as a corporation, shall be represented at the mediation by an officer or other person who has full and unrestricted authority to negotiate and make a binding settlement on behalf of that party.
14. The term “full authority” in clauses 12 and 13 means authority to settle within any range and on any terms that may reasonably be anticipated.

## **REPRESENTATION AT MEDIATION**

15. At the mediation, every party may have one or more other persons, including legally qualified persons, to assist and advise however such person shall before becoming involved in the mediation sign a third party confidentiality agreement in the form annexed hereto.

## **THIRD PARTIES WHO DO NOT REPRESENT PARTIES**

16. Third parties, who are not acting as representatives of a party, shall only be entitled to attend and be part of the mediation with the consent of all other parties and only after signing a third party confidentiality agreement in the form annexed hereto.

## **PRELIMINARY CONFERENCE**

17. The parties and their representatives will, prior to the mediation, participate in a preliminary conference convened by the mediator to discuss and agree upon:
  - 17.1 the suitability of the matter for mediation;
  - 17.2 the collation, disclosure and presentation of material and documentation for use in the mediation;

17.3 the setting of a time, date and venue for the mediation;

17.4 any other planning or administrative arrangements necessary to enable the mediation to take place.

18. After the preliminary conference, before the mediation:

18.1 each party will give consideration to the taxation implications, including without limitation, capital gains tax and goods and services tax implications, of settling their dispute, and of not settling their dispute; and

18.2 each party's legal advisers will advise their client in writing with a copy to the mediator :

(a) The solicitor-client costs up to and including the mediation,

(b) Additional solicitor-client costs up to and including any contested hearing,

(c) Costs that may be payable to the other party if the client loses at a contested hearing, and

(d) Costs that may be payable by the other party if the client wins at a contested hearing.

## **SETTLEMENT OF THE DISPUTE**

19. In the event that the dispute is settled, a settlement agreement shall be written down and signed by the parties and the mediator prior to the end of the mediation. No party may leave the mediation until the settlement agreement is signed by all of them.

## **ENFORCEMENT OF SETTLEMENT AGREEMENT**

20. Any party will be at liberty to enforce the terms of the settlement agreement referred to in clause 19 by judicial proceedings and for the purposes thereof, any party may call evidence of the settlement agreement.

## **TERMINATION OF MEDIATION**

21. The mediator may terminate the mediator's involvement in the mediation if, after consultation with the parties, the mediator decides he is unable to assist the parties to achieve resolution of the dispute.

22. Any party may terminate the mediation at any time after consultation with the mediator.

### **MEDIATION COSTS AND EXPENSES**

23. The mediator's costs are those described in Schedule 2.

24. Any other costs associated with the mediation are those described in Schedule 2.

25. Unless otherwise stipulated in item 2.3 of Schedule 2, the parties agree that they will each be liable to pay half of the mediator's costs and other expenses, including those set out in Schedule 2, and will pay the mediator within 14 days of the mediator posting a fee note to each of them at their respective addresses set on page 1.

26. Unless otherwise agreed and stipulated in Schedule 2, each party will pay its own costs and expenses of the mediation including its own legal representation.

27. Unless otherwise agreed and stipulated in Schedule 2, the parties agree that none of the mediator's costs or other expenses stipulated in item 2.1 of Schedule 2 hereto will be costs recoverable as part of the party/party costs of any legal proceedings relating to the dispute.

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

28. The mediator will not be liable to any party for any act or omission in the performance of the mediator's obligations under this agreement unless the act or omission is fraudulent.

29. The parties together and separately indemnify the mediator against any claim for any act or omission in the performance of the mediator's obligations under or in connection with this agreement unless the act or omission is fraudulent.

## **SCHEDULE 1 - DESCRIPTION OF THE DISPUTE**

The dispute is:

|                              |
|------------------------------|
| A dispute in connection with |
| _____                        |
| _____                        |

## **SCHEDULE 2 - COSTS OF THE MEDIATION**

- Full-day Mediation fee: \$6,000 (plus GST) per day for up to seven hours on the day of mediation and \$600 (plus GST) for each hour thereafter and per hour in cases where the preliminary conference and reading time in preparation exceed two and a half hours.
- Half-day Mediation fee: \$3,500 (plus GST) for up to four hours on the day of the mediation and \$350 (plus GST) for each hour thereafter and per hour in cases where the preliminary conference and reading time in preparation exceed one and a half hours.
- Preliminary conference fee: **waived**.
- Postponement fee: \$6,000.00 (plus GST)
- Hourly Rate: \$600 per hour (plus GST)

Hire of premises (to be paid the by parties): \_\_\_\_\_

Location: \_\_\_\_\_

Other expenses (to be paid by the parties): \_\_\_\_\_

Further or alternative  
conditions relating to  
costs and expenses \_\_\_\_\_



***The parties and the mediator have signed this agreement to mediate as follows:***

**DATED** the \_\_\_ day of \_\_\_\_\_, 20 \_\_

|    |  |  |
|----|--|--|
| 1. | Name of party/representative. <i>Please print.</i> |  |
|    | Signature of party/representative                  |  |
| 2. | Name of party/representative. <i>Please print.</i> |  |
|    | Signature of party/representative                  |  |
| 3. | Name of party/representative. <i>Please print.</i> |  |
|    | Signature of party/representative:                 |  |
| 4. | Name of party/representative. <i>Please print.</i> |  |
|    | Signature of party/representative:                 |  |
|    | Name of mediator. Please print.                    |  |
|    | Signature of mediator:                             |  |

### **SCHEDULE 3 - THIRD PARTY CONFIDENTIALITY AGREEMENT**

Any person who attends or becomes part of the mediation who is not one of the parties or a mediator must complete this confidentiality agreement.

Name of third party \_\_\_\_\_

I/We have accept and agree to the following conditions of my attendance at the mediation involving (parties' names)

|    |      |  |
|----|------|--|
| 1. | name |  |
| 2. | name |  |
| 3. | name |  |
| 4. | name |  |

- To preserve total confidentiality in relation to the course of the mediation and all exchanges within the mediation that may come to my knowledge concerning the dispute which is the subject of the mediation.
- Not to disclose any information that may come to my knowledge during the mediation except to a party or the mediator or if compelled by law to do so and not to use that information for any purpose other than the mediation.

I understand that this agreement does not restrict freedom to discuss matters relevant to the mediation and information disclosed in the proceedings with the party on whose behalf or at whose request I am present at the mediation provided always that any such disclosures and discussions will only be on the same basis of confidentiality.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Signature \_\_\_\_\_