

AGREEMENT TO MEDIATE

Between :

And

We enter into mediation with the intention of clarifying the issues, gaining better understanding of each point of view and resolving our dispute regarding:

[Insert agreed text that describes the dispute.]

On entering this mediation, we the parties and the mediator agree as follows:

1. Name of Mediator has been appointed as mediator in this dispute. This agreement governs the conduct of the mediation.
2. The mediator will assist the parties to gain a better understanding of the situation and to work towards a satisfactory resolution of the issues.
3. The mediator will not offer legal or other professional advice. The parties should consider whether it is necessary to seek such advice prior to mediation or have Counsel present so that they are fully informed about their interests, rights and obligations.
4. It is not the role of the mediator to determine the outcome of the mediation. That decision will always rest with the parties.
5. Prior to the commencement of the mediation each party will reach agreement through the mediator regarding:
 - a) The time and venue for the mediation.
 - b) The exchange and presentation of any documents including a brief written outline of the issues and/or confidential statements to the mediator.
 - c) Participation in the mediation by any support persons, other contributors and legal advisors.
 - d) The payment of the mediation and related fees.
6. Each party confirms that they have the necessary authority to settle.
7. If it becomes evident to the mediator that she has a clear or possible conflict of interest in relation to this mediation, the mediator will make this known to the parties who will then decide whether the mediation should continue under the named mediator.
8. If the mediator determines that it is not possible to resolve issues through mediation or if at any stage the mediator considers it unsafe or unwise to continue, the mediator will adjourn or terminate the mediation. The mediator will explain the reasons for doing so to the parties at the time, and if necessary confirm her views in writing to each party.
9. The parties are free to withdraw from the mediation at any time. The parties undertake to explain to the best of their ability the reasons for their withdrawal prior to doing so.

10. In order for mediation to be effective, open and honest communication is essential. Accordingly, all written and oral communications will be treated as without prejudice, confidential and privileged which means that :-
- a) The mediator will not reveal anything discussed in mediation without the permission of the parties. The one exception to this will be where the mediator has a realistic and serious concern about the safety of the parties or another person.
 - b) The parties agree that they will not call the mediator as witness in any legal proceeding relating to anything discussed in mediation, and waive any right they might otherwise have to call the mediator as witness.
 - c) Except as outlined in paragraph (d) below, the parties agree that they will not request the production of any records or notes of the mediator (written or otherwise), for use in any legal proceedings concerning this matter or any other, and waive any right they might otherwise have to request any such document.
 - d) This agreement to mediate and any written agreement as a result of the mediation may be subsequently used by the parties in any enforcement proceedings if required. The agreements will also be available to the parties for any other use at their discretion unless the parties have made an agreement **not** to do so.
11. When an agreement is reached, the mediator will (if required) record the details to the satisfaction of each party. It may be appropriate that parties take time to review the agreement and seek legal advice before signing.
12. The parties undertake to give effect to any agreement reached.
13. Excluding fraud, the parties jointly and severally release, discharge and indemnify the mediator in respect of all liability of any kind (whether negligent or not) which may be alleged to arise in connection with or result from or relate in any way to the mediation.
14. 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, or any related complaint, and this document may be pleaded in bar to any such action.
15. The parties agree to share the cost of the mediation according to the terms established between themselves and the mediator as follows [to be negotiated]:
- a) The parties each agree to pay a share of the total fee which is \$[as agreed] per hour / per day (plus GST and disbursements) for the duration of the mediation, including time spent in preparation, individual sessions and report writing.
 - b) The fee shall be paid within 21 days after the conclusion of the mediation.
 - c) Each party shall otherwise pay its own costs and expenses of the mediation.

I understand and agree to each of the provisions of this agreement:

i) _____ /_____/_____
Name of Party Signature Date

ii) _____ /_____/_____
Name of Party Signature Date

iii) _____ /_____/_____
Name of Party Signature Date

iv) _____ /_____/_____
Name of Party Signature Date

v) _____ /_____/_____
Name of Party Signature Date

Mediator: Name of Mediator /_____/_____
Signature Date