

PARTIES

FIRST PARTY: [NAME]

SECOND PARTY: [NAME]

AGREEMENT FOR MEDIATION OF DISPUTE WITH BLAIR O'BRIEN AS MEDIATOR

BLAIR O'BRIEN
MEDIATOR
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BACKGROUND:

The Parties are in dispute. The nature of the dispute is described in the Schedule at the end of this agreement and from now on is referred to in this agreement as “Dispute”.

The Parties have agreed to participate in mediation with the aim of resolving the Dispute and wish to appoint Blair O’Brien (“Mediator”) to mediate the Dispute.

This agreement contains the terms upon which the Mediation will take place.

AGREEMENT

1. Acceptance

The Parties accept and agree to the matters set out in the Background immediately above.

2. Appointment of Mediator

The Parties appoint the Mediator and the Mediator accepts appointment to mediate the Dispute at a Mediation Conference (“Mediation Conference”) on the terms set out in this agreement.

3. Mediation Conference

The Mediation Conference will take place at the venue described in the Schedule (“Venue”) and at the date and time described in the Schedule or at such other date and time as may be agreed.

4. Responsibilities of Mediator

The Mediator will:

- (a) be in control of the mediation process whether during the preliminary stages leading up to the Mediation Conference or during the Mediation Conference itself;
- (b) be impartial;
- (c) assist the Parties to:
 - (i) identify issues between them,

- (ii) express their interests,
- (iii) develop options for resolution of the Dispute; and
- (iv) reach an agreement which accommodates their interests;
- (d) not give advice to any Party; and
- (e) not make a decision for the Parties.

5. **Responsibilities of the Parties**

The Parties individually and collectively agree:

- (a) to act in good faith and to use all reasonable efforts to seek an acceptable resolution of the Dispute;
- (b) to attend the Mediation Conference at the Venue and on the date and time agreed;
- (c) to comply with any reasonable requests of the Mediator for assistance directed towards resolution of the Dispute including:
 - (i) provision of claim summaries, documents and submissions;
 - (ii) disclosure of information;
 - (iii) attendance either alone or with the other Party or Parties at any meeting called by the Mediator prior to the Mediation Conference.

6. **Authority to Settle**

Each Party or their representative/s at the Mediation Conference will have full and unrestricted authority to settle the Dispute.

7. **Privilege and Confidentiality**

The Parties and the Mediator agree:

- (a) All that is prepared in writing for the Mediation or that is said or written by any person at the Mediation is privileged and confidential and cannot be used outside the Mediation, disclosed to any person not present at the Mediation or be used in any arbitration, tribunal or Court proceeding unless:
 - (i) disclosure is required by law;

- (ii) disclosure is made for the purpose of obtaining professional advice after the advisor's agreement to maintain the privileged and confidential nature of the disclosed material has been given;
 - (iii) material that has been prepared in writing would in any event have been discoverable in arbitration, tribunal or Court proceeding.
- (b) Any information received by the Mediator from a Party in private will not be disclosed to another Party without the consent of the first Party.
 - (c) Any non-Parties present at any time during the Mediation must sign a confidentiality agreement.
 - (d) The Mediator will not be subpoenaed as a witness in any arbitration, tribunal or Court proceeding.

8. **Settlement of the Dispute**

If the Dispute is resolved by the Parties the agreed terms of settlement will be recorded in a written agreement and signed by all those Parties and will not be binding until so recorded and signed. This settlement agreement will be enforceable at law. Otherwise than for the purposes of such enforcement it will remain privileged and confidential. The Parties may only vary this privilege and confidentiality provision by agreement in writing signed by the parties and then only to the extent so recorded in writing.

9. **Exclusion of Liability and Indemnity**

- (a) The Mediator will not be under any civil or criminal liability for any act or omission by the Mediator taken or omitted by him in relation to the Mediation including the performance of functions under this agreement and participation in the drafting, execution and implementation of a settlement agreement unless the act or omission is fraudulent or he has acted in bad faith. Each of the Parties indemnifies the Mediator in respect of any such claim unless based on fraud or an act of bad faith.
- (b) No statement or comments whether written or oral made or used by the Parties or their representatives or the Mediator within 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 pleaded as a bar to any such action.
- (c) Comments or communications by the Mediator are not to be relied upon as professional advice.

10. **Termination of the Mediation**

- (a) A Party may terminate the Mediation at any time but only after consultation with

the Mediator; and

- (b) The Mediator may terminate the Mediation, if, after consultation with the Parties, the Mediator considers he is unable to assist the Parties to achieve resolution of the Dispute.

11. Mediator's Costs

- (a) The Parties agree that they will share equally the Mediator's Costs assessed in accordance with the Schedule and will pay the Mediator no later than 14 days after conclusion or termination of the Mediation.
- (b) Each Party will pay his/her or its own costs and expenses of the Mediation.

12. Variation of Agreement

No variation of this agreement will be effective unless it is in writing and signed by each Party and the Mediator who have signed this agreement.

SCHEDULE

Dispute: [describe Dispute]

Mediator's Costs:

A fixed fee of \$2,500.00 plus GST for a full day Mediation conference reducing to a fixed fee of \$1,250.00 plus GST for a Mediation conference which does not exceed 4 hours. Fixed fee option includes all preparation time as well as travel time in the Auckland region.

Alternatively an hourly rate of \$275.00 plus GST with travelling time (if any) charged at half hourly rate.

Mediator's expenses additional (if incurred) and may include:

- venue hire;
- refreshments;
- secretarial services,

- photocopying and other administrative costs;
- travel and accommodation disbursements (no charge for travel in the greater Auckland area).

Venue for Mediation: **Resolution House**
107A Lake Road
Northcote
North Shore
Auckland

Date and Time of Mediation: [Date and Time]

SIGNED:

_____ First Party

_____ Second Party

_____ Mediator