



Mediation Agreement

Between

XXXX (Party 1)

and

XXXX (Party 2)

(collectively “the Parties”)

and

Robert Algie of Edge Mediations Pty Limited (“the Mediator”)

Appointment of the Mediator

1. The Parties appoint the Mediator, and the Mediator accepts the appointment to mediate the dispute described in Schedule 1 (the Dispute) in accordance with the terms of this agreement.

The Mediation

2. The “Mediation” shall comprise of all steps taken to attempt to resolve the Dispute through a structured negotiation process involving the Mediator, which will include any steps taken both prior to and subsequent to the execution of this agreement.

3. The Mediation will take place on the date and at the location set out in Schedule 2 unless agreed otherwise between the Parties and the Mediator.
4. The Mediation, including all preliminary steps, will be conducted in such manner as the Mediator considers appropriate, having due regard to the nature and circumstances of the Dispute and the agreed goal of an efficient and expeditious resolution of the Dispute.
5. The Mediator may give directions with respect to the conduct of the Mediation, including directions for:
 - a. preliminary conferences prior to the Mediation;
 - b. any steps to be taken to define issues, narrow the Dispute, identify areas of agreement and/or clarify the basis of disagreement;
 - c. the exchange and service on the Mediator prior to the Mediation of position statements, written submissions, reports and other documents relevant to the Mediation;
 - d. service on the Mediator prior to the Mediation of any pleadings, reports, submissions, affidavits or other documents filed in or prepared for existing proceedings relating to the Dispute; and
6. Any Party who provides the Mediator with a document will simultaneously provide a copy to every other Party unless the document is provided to the Mediator on a confidential basis.
7. If the Mediation, or any part of it, takes place via electronic communication and/or over the Internet, each Party agrees and undertakes to ensure that:
 - a) The only persons who will participate in, listen to or observe those communications shall be the persons who have signed the acknowledgement and undertaking as to confidentiality as per Schedule 2 and
 - b) If a Party mistakenly enters, or is placed in, an incorrect breakout room, session, or private communication, they will immediately leave that room, session or communication and inform the Mediator

8. The Parties must cooperate, act courteously, participate in good faith throughout the Mediation and use their best efforts to comply with reasonable requests made and procedural directions given by the Mediator in connection with the Mediation.
9. The use of any recording devices during the Mediation, whether audio or visual, without the written consent of the Mediator and the Parties, is prohibited. Should any Party become aware of a recording, they are immediately to advise the Mediator, not disseminate the recording, and immediately destroy the recording. Any breach of this clause shall render the contents of any recording of no effect and will be inadmissible as evidence of any part of the Mediation

Functions of the Mediator

10. The Mediator will assist the Parties to identify the issues between them and to explore options for and, if possible, to achieve the expeditious resolution of the Dispute by agreement between them.
11. The Mediator will be neutral and impartial.
12. The Mediator will not advise a Party, nor make decisions for, nor impose a solution on the Parties.
13. The Mediator may, if it will advance the Mediation, enter confidential discussions with each Party separately to assist a party to evaluate their prospects in litigation, including a final hearing. In doing so, the Mediator may enter active discussions and proffer views about potential outcomes of individual issues and the practicality of proceeding with litigation, however in doing so, will not provide legal advice to the Parties.
14. The Mediator confirms that the Mediator has no interest in the Dispute, nor has the Mediator had any prior dealings with any of the Parties in relation to the Dispute.
15. If during the Mediation, the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator will, to the extent that the Mediator may properly do so, immediately inform the Parties of those circumstances. The Parties will then confer, and the Mediator will continue to participate in the Mediation if the Parties so agree.

16. If, after consultation with the Parties, the Mediator forms the view that the Mediator will be unable to assist the Parties to achieve resolution of any of the Dispute, the Mediator may terminate the appointment as Mediator by giving written notice to the Parties of that termination.

Costs and Mediator's Fees

17. Each Party will meet its own costs of and in connection with the Mediation
18. Irrespective of the outcome of the Mediation, the Parties, together and separately, agree to pay the Mediator the fees and disbursements as specified in Schedule 3.
19. Unless the Parties agree otherwise and that agreement has been confirmed in writing, the Parties will share equally the fees and disbursements of the Mediator as specified in Schedule 3.
20. In the event of default in payment by a party within the time frame for payment specified in the Mediator's tax invoice, the defaulting Party's solicitor agrees to pay the fees due and payable by their client.
21. A cancellation fee of 50% of the applicable rate will be charged if the mediation is cancelled within 7 days of the scheduled date for the mediation.

Authority & Representation

22. Each party must be represented at the Mediation by a person or persons having, or able during the course of the Mediation to obtain, authority to settle the Dispute.
23. Any persons other than the Parties (including legally qualified persons) attending the Mediation to assist and or advise a Party in the Mediation shall sign an acknowledgement and undertaking as to confidentiality as specified in Schedule 2.

Communication between the Mediator and a Party

24. The Mediator may communicate with a Party or the Parties orally, in writing or online as the Mediator may see fit.
25. The Mediator may, as frequently as the Mediator deems appropriate, meet with the Parties together or separately.

26. Confidentiality

27. The Parties and the Mediator will not, unless required by law to do so, disclose to any person not present at the Mediation, nor use, any confidential information furnished during the Mediation unless such disclosure is to obtain professional advice or is to a person within that Party's legitimate field of intimacy, and the person to whom the disclosure is made is advised that the confidential information is confidential.
28. The Mediator agrees to keep confidential all information furnished by a Party to the Mediator unless consent is provided by the Party who furnished the information for its disclosure to another Party during the Mediation.

Termination

29. A Party may at any time terminate the Mediation by giving written notice terminating the Mediation to each other Party and to the Mediator.
30. In the absence of notice by a Party terminating the Mediation the Mediation will be terminated only upon execution of a written settlement agreement in respect of the Dispute. Such settlement agreement shall be drawn up and executed at the earliest possible time after the terms of settlement have been agreed on.

Enforcement

31. Any Party will be at liberty:
- a) to enforce the terms of a settlement agreement;
 - b) in any enforcement proceedings, to adduce evidence of and incidental to the settlement agreement including evidence from the Mediator and any other person engaged in the Mediation.
32. The mediator will not accept appointment as an arbitrator, act as an advocate, or provide advice to a party in any court proceeding relating to the Dispute.
33. The Parties will not do anything to cause the Mediator to breach Clause 32.

Exclusion of Liability and Indemnity

34. The Mediator will not be liable to a Party for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement unless the act or omission is fraudulent.
35. Each party indemnifies the Mediator against all claims by that Party or anyone claiming under or through that Party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement unless the act or omission is fraudulent.
36. No statements 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.

Legislative Provisions

37. The terms of this agreement are subject to the provisions of any legislation that may be applicable to or govern the Mediation, and in the event of any inconsistency, the provisions of the legislation will prevail.

Schedule 1

Description of the Dispute, including the title and number of any related legal proceedings:

XXXX

Schedule 2

The Parties and the Mediator have entered into a Mediation Agreement dated XXXX in accordance with which the Mediator will conduct a Mediation on XXXX at XXXX.

1. The undersigned acknowledge by their signatures that they attend the Mediation on the basis of their agreement to the terms of clauses 2 and 3 below.
2. Each of the undersigned undertakes to the Parties and the Mediator:
 - (a) to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the Mediation, including the preliminary steps ("**Confidential Information**");
 - (b) not to act contrary to the undertaking in sub-paragraph (a) unless compelled by law to do so or with the consent of the Party who disclosed the Confidential Information;
 - (c) not to use Confidential Information for a purpose other than the Mediation.
3. Each of the undersigned undertakes to the Parties and the Mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceedings between the Parties to the Mediation:
 - (i) any settlement proposal;
 - (ii) the willingness of a Party to consider any such proposal;
 - (iii) any admission or concession made by a Party;
 - (iv) any statement or document made by the Mediator.

Schedule 3

Mediator's Fees and Expenses

- 1 For all preparation, including any preliminary conference \$500 per hour
- 2 For the Mediation \$XXXX
If the Mediation exceeds the allocated time of 4 hours in the case of a half-day mediation or 8 hours in the case of a full-day mediation, the Mediator's time will be charged at \$500 per hour
- 3 Accommodation, meals and travel expenses (if applicable) At cost
- 4 Allocation of costs (if not specified below - to be shared equally between the Parties)

Party	Percentage
Party 1	%
Party 2	%
Party 3	%
Party 4	%

Dated XXXX

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Signature

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Print name

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Print name

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