

## TERMS OF ENGAGEMENT

- 1 The purpose of these engagement terms is to set out the basis upon which you appoint me as mediator.
- 2 Unless we agree different engagement terms in writing these terms, together with my mediation agreement, apply to my appointment.
- 3 My mediation agreement and CV are available at my [www.geoffsharpmediation.com](http://www.geoffsharpmediation.com).

### My role as mediator

- 4 My role is detailed in my standard mediation agreement, in particular clauses 2.1-2.2 as follows:

*2.1 The mediator and each party will use their best endeavours to resolve the Dispute by:*

*2.1.1 systematically identifying the issues in dispute;*

*2.1.2 developing alternatives and options for the resolution of the Dispute;*

*2.1.3 exploring the usefulness of each alternative; and*

*2.1.4 seeking to achieve a resolution which is acceptable to the parties and which meets their interests and needs.*

*2.2 The mediator will be neutral and impartial.*

*2.2.1. The mediator will not:*

*a give legal or other professional advice to any party;*

*b impose an outcome on any party; or*

*c make any decision for any of the parties.*

*2.2.2 The mediator can meet with the parties jointly and/or separately, as the mediator determines.*

### Intake process

- 5 Initial Email - once my appointment has been agreed, I will send an e-mail to all counsel involved in the mediation confirming my appointment and listing several preliminary matters (such as documentation, who should attend the mediation etc) to be agreed by counsel. This email will include the mediation agreement together with these engagement terms.
- 6 Telephone conference or meeting - often it is useful for all counsel to jointly meet with me by telephone or in person prior to the mediation if there are preliminary issues needing discussion, and I would appreciate your advice if you think either is necessary. I will often call counsel privately but do not routinely convene a pre-mediation telephone conference or meeting of all counsel and will be guided by counsel in this regard.
- 7 My written correspondence is by email.

## Fee Structure

- 8 While based in Wellington, I offer myself as a local mediator in all NZ centres for a flat fee for a one-day mediation – meaning there are no unexpected charges. My fee includes:
  - intake tasks and administration;
  - preparation/review of materials;
  - mediation agreement;
  - pre-mediation phone calls;
  - one day of mediation;
  - up to two hours of follow up/aftercare; and
  - all out of pocket expenses, including but not limited to, printing of electronic files, flights, taxis, accommodation etc, subject to following clause 9.
- 9 The only costs not included in my fee are:
  - large volume copying of documents (100+ pages);
  - venue charges (should I arrange room hire);
  - pre-mediation in person meetings and any associated costs; and
  - second night and additional accommodation and expenses.
- 10 My flat fee for a one-day mediation is **\$15,000 plus GST**. Please also note the following:
  - A second (contiguous) day of mediation is **\$14,000 plus GST** per day.
  - A one-day mediation consists of approximately 15 hours: 5 hours of intake/preparation and 10 hours on the day of the mediation.
  - There is no additional charge if the mediation runs late on the day.
- 11 Fees are usually shared equally among the parties and are plus GST and disbursements, however parties are free to agree otherwise.
- 12 I do not bill for routine after care/follow up of up to two hours. However, if post mediation work takes more time or if a second mediation day or if conference calls are required my fees as above (or a prorated hourly rate) will apply.

## Billing and payment

- 13 I will email a tax invoice in the name of legal advisers within a week of the mediation. If you would prefer to receive an invoice in a different name, please let me know at the time of engagement.
- 14 Payment is due within seven days of invoice and any outstanding fees and costs attract interest at the rate of 2% per month or part thereof.

- 15 Please pay by direct credit and include the invoice number as a reference into the following account:

*Bank: BNZ, Wellington Branch / Account: Geoff Sharp – Practice Account / Account # 020500-0924998-00*

- 16 Counsel may wish to obtain their client's share of the mediation costs upfront to be held pending invoice, especially where there is a concern as to ability to pay or timely payment. Please feel free to request a pre-mediation invoice if this is the case.
- 17 Counsel who appoint me as mediator are responsible for my fee in equal shares in the usual way when a barrister is instructed.
- 18 I reserve the right to request advance payment of my fee.

## **Professional Indemnity Insurance**

- 19 A copy of my Certificate of Currency for my Professional Indemnity Insurance is available on request.
- 20 My mediation agreement contains the following;
- 11.1 The parties agree that the mediator will not be liable to any party for any act or omission in the performance of the mediator's duties and obligations under this agreement, unless the act or omission is fraudulent.*
- 11.2 Each party separately indemnifies the mediator against any claim for any act or omission in the performance of the mediator's duties under this agreement, unless the act or omission is fraudulent.*

## **Cancellations and Postponement**

- 21 When a mediation date is booked, I am committed to that date as well as a period of preparation in advance of it. Where parties cancel or postpone a mediation it is rarely possible to make use of the slot reserved.
- 22 My cancellation and postponement terms are designed to cope fairly with this situation.
- 23 Once a date for the mediation has been fixed, all parties who then participate in the mediation preparations do so on the basis that they accept liability in equal shares for any cancellation or postponement fees that may be incurred. Please note that this liability is not dependent on a mediation agreement being signed as this often will not be signed until the day of the mediation. Neither is it dependent on who has caused or requested the delay.
- 24 If you or your clients would like to discuss alternative arrangements, such as a provisional booking, please discuss it with me.
- 25 If a mediation is cancelled or postponed at any time after a date is set, I may charge 25% of my fee covering my intake time.
- 26 If a mediation is cancelled or postponed within 21 days of the mediation date, I will charge 50% of my fee and if it is cancelled or postponed within 10 days of the mediation date, I will charge 100% of the mediation fee.

- 27 Where I reasonably incur expenses (for instance, venue, travel or accommodation) prior to a mediation and these are unrecoverable after cancellation or postponement the parties will be liable in equal shares for these.
- 28 I do understand that cancellation or postponement is sometimes unavoidable so please discuss with me to come to a sensible arrangement.

## Pro Bono work

- 29 I wish to ensure an appropriate proportion of my practice remains pro bono mediation work and I undertake this at no fee or at a discounted fee in deserving cases, usually involving community issues. If your case is in this category, please discuss it with me.

## Mediation file

- 30 I will keep on file only the mediation agreement signed by the parties which I will send in electronic form to you after the mediation together with any settlement agreement that I am provided at the conclusion of the mediation. I will return to counsel any documents provided to me by that counsel upon request or destroy them by a secure method soon after the mediation.

## Conflicts of interest

- 31 I will disclose to the parties and/or their legal advisors any properly disclosable conflicts that I am aware of.
- 32 If in the course of the mediation I become aware of any circumstances that might reasonably be considered to affect my capacity to act impartially, I will inform the parties and/or their legal advisors.

## Acceptance

- 33 By appointing me as mediator you accept these terms of engagement unless we otherwise agree in writing.

Thank you for your appointment.

**Geoff Sharp**  
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Wellington, New Zealand

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## General Disclosure

*My wife, Susan Thomas, is a High Court Judge sitting in Wellington. I am comfortable mediating matters in which she may be involved however if this raises any concern for you, please discuss it with me. Naturally, I take obligations of confidentiality extremely seriously and will not usually know that your matter is one in which she is involved, so I rely on you advising me of that.*