

MEDIATION AGREEMENT

MEDIATION AGREEMENT dated 1 January 2020 between:

- 1 **PARTY ONE**
- 2 **PARTY TWO**
- 3 **PARTY THREE**
- 4 **PARTY FOUR**

Geoff Sharp of Wellington (the mediator).

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1 Appointment of the mediator

- 1.1 The parties appoint the mediator to assist them to resolve the dispute that is briefly described in the schedule to this agreement (**the Dispute**) in accordance with this agreement and the mediator's current terms of engagement.
- 1.2 The mediator accepts the appointment to mediate the Dispute.

2 Role of the mediator and of the parties

- 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 that 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.

3 Conflict of interest

- 3.1 The mediator must, before the commencement of the mediation, disclose to the parties, to the best of the mediator's knowledge, any relevant prior association with any of the parties as well as disclose any interest in the Dispute.
- 3.2 If in the course of 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 must inform the parties of those circumstances and the parties may agree that the mediator may continue to mediate.

4 Co-operation of the parties

- 4.1 Each party agrees to take part in the mediation in good faith.
- 4.2 Each party will comply with the reasonable requests and directions of the mediator in relation to the conduct of the mediation.

5 Pre-mediation meeting

- 5.1 As part of the mediation, the mediator may conduct a pre-mediation meeting in order to establish a timetable and procedure for the conduct of the mediation.
- 5.2 Unless the parties and the mediator agree otherwise, the parties and their representatives who are to attend the mediation are expected to attend the pre-mediation meeting.

6 Authority to settle and representation at the mediation

- 6.1 Each party must have in attendance at the mediation a person or persons who will have the ultimate authority to settle the Dispute and bind the relevant party to any settlement agreement, without having to refer to anybody else. If that is not reasonably practical, the mediator and other parties are to be notified prior to the mediation and each party must then have in attendance at the mediation a person with sufficient authority to recommend to the ultimate decision maker whether or not and in what manner to settle the Dispute, and whose recommendation is likely to be accepted.
- 6.2 Each party can, with the consent of the mediator, attend the mediation with one or more persons to assist or advise the parties.

7 Confidentiality of the mediation process

- 7.1 Any information disclosed during the mediation process by a party or that party's representative to the mediator in private is without prejudice and confidential, and may not be disclosed by the mediator to the other party unless the party making the disclosure states otherwise.
- 7.2 The parties and the mediator will not disclose to any person not present at the mediation any information or document given to them during the mediation, unless required by law to make such disclosure, or unless permitted or required to do so under Clause 7.3 or Clause 10.1
- 7.3 A party may disclose information or documents obtained during the mediation to a person not present at the mediation where that party needs to do so in order to obtain professional advice or where the person is within that party's legitimate field of intimacy. A party disclosing information or documents in these circumstances must inform the professional advisor or any such person that the information or documents are confidential.
- 7.4 The parties and the mediator agree that, subject to Clause 10.1, the following will be privileged and will not be disclosed, tendered as evidence, or be the subject of a subpoena to give evidence or produce documents, in any proceedings relating to the Dispute:
- 7.4.1 Any settlement proposal, whether made by a party, person at the mediation or by the mediator.
 - 7.4.2 The willingness of a party to consider such a proposal.
 - 7.4.3 Any statement made by a party, person attending or the mediator during the mediation.
 - 7.4.4 Any information or document prepared for or provided during the mediation process.
- 7.5 If a party produces a document at the mediation that otherwise would be privileged from production or from admission into evidence, that party does not waive that privilege by producing the document.
- 7.6 A party is permitted to produce a document to the mediator which contains information that shall not be disclosed or produced to the other parties to the mediation. Any such document shall be labelled "Confidential And For The Mediator Only" or similar. The mediator undertakes and agrees not to produce a document labelled as such to other parties to the mediation.

8 Recording of mediation

- 8.1 No formal record, transcript or mechanical, electrical or digital recording of the mediation shall be made.

9 Recording of settlements

- 9.1 No settlement reached during the mediation will be legally binding unless and until it has been reduced to writing and signed by or on behalf of the parties.

10 Enforcement of settlement agreements

- 10.1 A party seeking to enforce a settlement agreement made at the mediation may call evidence of entry into the agreement, including evidence from the mediator and from any other person present at the mediation.

11 Indemnity and exclusion of liability

- 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.
- 11.3 In no circumstances shall any party or their advisers or representatives require or compel the mediator to act as a witness/give evidence in any proceedings connected with the mediation or the Dispute, or to disclose any documents or notes the mediator may have prepared in connection with the mediation unless permitted or required to do so under Clause 10.1.
- 11.4 The mediator will not voluntarily act as a witness/give evidence for any of the parties. Neither party shall require the mediator to give evidence in any satellite litigation arising out of the mediation.

12 The cost of the mediation

- 12.1 The parties will pay the Mediator's fees set out in the terms of engagement found at www.geoffsharpmediation.com
- 12.2 Unless the parties agree otherwise, they will share equally all the fees and costs of the mediation. These costs are to be paid within seven days of the mediation, however the mediator may request estimated fees to be paid prior to the mediation. Any outstanding fees and costs attract interest at the rate of 2% per month or part thereof.

13 Termination of the mediation

- 13.1 A party may terminate its involvement in the mediation at any time but only after consultation with the mediator.
- 13.2 The mediator may terminate his involvement in the mediation if, after consultation with the parties, he feels unable to assist the parties to achieve resolution of the Dispute.

Schedule

The Dispute: as set out in High Court proceedings (XX Registry) CIV XX.

Date of mediation: **1 January 2020**

Place of mediation: **Auckland**

Commencement time of mediation: **9:30 am**

Please sign by or on behalf of each party

Signed on behalf of: PARTY ONE

Signed on behalf of: PARTY TWO

Signed on behalf of: PARTY THREE

Signed on behalf of: PARTY FOUR

Signed by the mediator GEOFF SHARP

**CONFIDENTIALITY AGREEMENT TO BE
SIGNED BY NON PARTIES ATTENDING THE
MEDIATION (INCLUDING COUNSEL)**

- 1 **PARTY ONE**
- 2 **PARTY TWO**
- 3 **PARTY THREE**
- 4 **PARTY FOUR**

As the condition of my being present or participating in this mediation, I agree that I will, unless otherwise compelled by law, preserve total confidentiality in relation to the course of proceedings in the mediation and in relation to any exchanges that may come to my knowledge, whether oral or documentary, concerning the dispute passing between any of the parties and the mediator or between any two or more of the parties during the course of the mediation.

This agreement does not restrict my freedom to disclose and discuss the course of proceedings and exchanges in the mediation within the organisation and legitimate field of intimacy of the party on whose behalf or at whose request I am present at the mediation, including the advisers and insurers of that party provided always that any such disclosures and discussions will only be on this same basis of confidentiality.

Dated: 1 January 2020

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