



www.evolveresolutions.com.au

MEDIATION AGREEMENT

(Including a Confidentiality Agreement to be signed by third parties)

This Agreement is made on

Between the parties named below

And the Mediator (the Mediator)

Name of Mediator: Jonathan Simpkins SC

Appointment of Mediator

1. The parties appoint the Mediator to mediate the dispute between them in accordance with the terms of this agreement. The dispute is briefly described in Schedule 1 to this Agreement (**the Dispute**). The Mediator accepts the appointment to mediate the Dispute at a time and place set out in Schedule 2 to this Agreement or such other place and time as may be agreed.

Role of the Mediator

2. The mediator will be neutral and impartial. The Mediator will assist the parties to attempt to resolve the Dispute by helping them to:
 - a. Systematically isolate the issues in dispute;
 - b. Develop options for the resolution of these issues;
 - c. Explore the usefulness of these options to meet the parties' interests and needs
3. The Mediator may meet with the parties together or separately.
4. The Mediator will not:
 - a. Give legal or other professional advice to any party; or
 - b. Impose a result on any party;
 - c. Make decisions for any party;
 - d. Ensure that any settlement is fair.
5. The Mediator may in his discretion and in the course of a private conference

with any party make observations about the practicalities of litigating the matters in issue.

6. The Mediator will not accept an appointment or act for any party in relation to any proceedings concerning the Dispute.
7. Neither party will take action to cause the Mediator to breach Clause 6.

Conflict of Interest

8. The Mediator must, prior to the commencement of the mediation, disclose to the parties to the best of the Mediator's knowledge any prior dealings with any of the parties as well as any interest in the Dispute.
9. 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 immediately inform the parties of these circumstances. The parties will then decide whether the mediation will continue with the Mediator or with a new mediator appointed by the parties.
10. The parties accept that the Mediator's ordinary personal and professional relationships with lawyers and corporate and government officials and assets such as listed shares and interests and insurance policies do not affect his capacity to act impartially.

Co-Operation by the Parties

11. The parties must co-operate with the Mediator and each other during the mediation.
12. A party who provides the Mediator with a document will expeditiously provide a copy to every other party unless the document is provided to the Mediator on a confidential basis.

Conduct of the Preliminary Conferences and Directions

13. As part of the mediation the Mediator may schedule a preliminary conference at a time and venue convenient to the parties to establish a timetable for the mediation.
14. The Mediator and their representatives who are to attend the mediation session must attend any such preliminary conference.
15. The Mediator may give directions concerning the conduct of the mediation, including directions as to:-
 - a. Preliminary conferences;
 - b. Steps to be taken to define the issues, narrow the disputes, identify areas of agreement and/or clarify the basis of disagreement;
 - c. The delivery of position papers, submissions, reports and other documents concerning the Dispute;
 - d. Presentations by experts retained by the parties and any joint conferences by experts.

Meetings and Communications

16. The Mediator may meet and communicate as frequently as he considers appropriate with the parties or separately with any of the parties and need not disclose a meeting, discussion or communication to any other party.
17. Subject to any legal obligation, the Mediator will not disclose any information or document provided to him on a confidential basis to another party unless he is authorized to do so by the party who provided the information or document.
18. Any information disclosed to the Mediator in private is to be treated as confidential by the Mediator unless the party making the disclosure states otherwise.
19. The Mediator may in his discretion talk to all or any of the legal representatives in the absence of clients and to any or all clients in the absence of their legal representatives.

Conduct of the Mediation

20. The mediation will be conducted in a manner that the Mediator considers appropriate to an efficient and expeditious resolution of the Dispute.
21. Each party must cooperate and act courteously and in good faith throughout the mediation and comply with reasonable requests made and procedural directions given by the Mediator in connection with the mediation.

Authority to Settle and Representation at the Mediation Session

22. All parties are expected to attend the mediation in person with authority to settle within any range that can reasonably be anticipated. If any party is not a natural person that party must be represented at the mediation by a person with full authority to make agreements binding on it settling the Dispute.
23. At the mediation each party may have one or more other persons, including legally qualified persons, to assist and advise them.

Confidentiality of the Mediation

24. The participants will not disclose to anyone not involved in the mediation any information or document given to them for the purposes of the mediation or during the mediation unless the parties have agreed to disclosure to that person and that person has signed a confidentiality agreement in the form attached to this agreement.
25. The participants agree that subject to Clauses 31 to 35, the following will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings in respect of the Dispute:
 - a. Any settlement proposal whether made by a party or the Mediator.

- b. The willingness of a party to consider any such proposal.
 - c. Any statement made by a party or the Mediator during the mediation.
 - d. Any information prepared for the mediation.
26. Each party shall ensure that any person who attends the mediation on their behalf (other than a party or legal representative signing this agreement) signs a confidentiality agreement in the form attached to this agreement.

Documentation

27. The Mediator will return all documentation provided to him other than the mediation agreement and any terms of settlement.

Suspension or Termination of the Mediation

28. A party may terminate the mediation at any time after consultation with the Mediator.
29. The Mediator has discretion to terminate or suspend the process at any time.
30. The Mediator may terminate the mediator's involvement in the mediation if, after consultation with the parties, the mediator feels unable to assist the parties to achieve resolution of the Dispute.

Settlement of the Dispute

31. If agreement is reached at the mediation, the terms of the agreement must be written down and signed by the parties before they leave the mediation.
32. Unless the parties otherwise agree in writing the resolution of the Dispute is not binding until a settlement agreement has been signed by the parties or their legal representatives.

Enforcement of the Settlement Agreement

33. Any party may enforce the terms of the settlement agreement by judicial proceedings.
34. For the purposes of Clause 33, any party may call evidence of the settlement agreement.
35. The Mediator is not required and will not be subpoenaed to give evidence in any proceedings, including proceedings to enforce a settlement.

Exclusion of Liability and Indemnity

36. The Mediator will not be liable to a party for any act or omission in the performance of the Mediator's obligations under this agreement unless the act or omission is fraudulent.
37. Each party indemnifies the Mediator against any claim for any claim brought by that party for any act or omission in the performance of the Mediator's obligations under this agreement unless the act or omission is fraudulent.

The Cost of the Mediation

38. The parties will be responsible for the costs of the mediation described in Schedule 3 in the proportions there set out (or in the absence of agreement, proportionately to the number of parties).
39. If the mediation does not result in an agreement to resolve the dispute, the parties' own costs of the mediation (the costs charged by the parties' legal representatives in relation to the mediation) will be costs in the cause, that is, those costs will be treated as part of the overall costs in court proceedings (whether or not those proceedings have commenced as at the date of the mediation agreement) which are generally payable by the losing party.

Exchange of Information and Documents

40. The parties agree to provide information and documents to the other parties,

for the purposes of the mediation.

41. Any request for information or documents may be made by one party to another party in writing.
42. The parties will endeavour to agree on the provision of information and documents. In the event that such agreement cannot be reached between any parties any party may request the Mediator to assist those parties reach agreement.

Execution

43. This agreement is effective when this document or counterpart has been signed by each of the parties, their legal representatives and the Mediator.

Date:

.....
(Name of Party) Signature

.....
(Name of Legal Representative) Signature

.....
(Name of Party) Signature

.....

(Name of Legal Representative)

Signature

.....

(Name of Party)

Signature

.....

(Name of Legal Representative)

Signature

.....

(Name of Party)

Signature

.....

(Name of Legal Representative)

Signature

.....

(Name of Party)

Signature

.....

(Name of Legal Representative)

Signature

.....

Jonathan Simpkins

.....

(Name of Mediator)

Signature

Schedule 1: Description of the Dispute **Please complete******

Schedule 2: Date and Venue of the Mediation Conference **Please complete******

Schedule 3: Costs of the Mediation

1. Mediator's Fees and Expenses

a. For work in Sydney

\$7,350 (plus GST) per day for mediation sessions until 7pm and \$735 per hour (plus GST) for any preparatory work or additional hours.

Payable in full within fourteen (14) days of the date of issue of a Tax

Invoice

b. For work outside Sydney

\$8,575 (plus GST) per day for mediation sessions until 7pm and
\$857.50 per hour (plus GST) for any preparatory work and additional
hours plus reasonable travelling expenses including airfares (business
class). Payable in full within fourteen (14) days of the date of issue of a
Tax Invoice.

2. Room hire at cost (unless otherwise arranged).

Confidentiality Agreement

.....
.....
(Name of participants present at the mediation) Signature

I undertake to the parties to the mediation that, in exchange for being permitted by them to participate at the mediation:

1. I will not disclose to anyone any information received by me during the mediation, unless required by law to make such a disclosure.
2. I will not disclose to anyone involved in the mediation any information received by me during the mediation from a party to the mediation unless expressly authorised by the disclosing party to do so.
3. To the extent that I am required to disclose any information either by law or otherwise I will immediately notify the other participants of this requirement.