

Mediation Agreement.

Between

And

(the Parties)

And

Adair Donaldson

(the Mediator)

Appointment and functions of the Mediator.

1. The Parties appoint the Mediator, and the Mediator accepts the appointment, to mediate the dispute briefly described in Schedule 1 (“**the Dispute**”) in accordance with the terms of this agreement.
2. The Mediator will be neutral and impartial.
3. 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.
4. The Mediator will not advise any Party. Neither will he make decisions for or impose a solution on the Parties.
5. The Mediator confirms that the Mediator has no interest in the Dispute. Neither has the Mediator had any prior dealings with any of the Parties in relation to the Dispute.
6. If in the course of the Mediation the Mediator becomes aware of any circumstances that the Mediator believes 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. If the Parties thereafter agree to the Mediator continuing to participate in the Mediation, the Mediator may do so.

Co-operation.

7. The Parties agree to participate in the Mediation in good faith and to use their best endeavors to attempt to resolve the Dispute.
8. Each Party will comply with reasonable requests and directions made by the Mediator in relation to the conduct of the Mediation.

Costs of the Mediation including Mediator's Fees.

9. Each Party will meet its own costs of and in connection with the Mediation.
10. Irrespective of the outcome of the mediation, the Parties, together and separately and by their solicitor, agree to pay the Mediator the fees described in Schedule 2.
11. Unless the Parties agree otherwise, they will share equally all costs of the Mediation set out in Schedule 2, including the Mediator's fees.
12. The Mediator will advise if there are travel and/or accommodation costs to be charged and obtain the consent of the Parties.

Authority & Representation.

13. Each Party may, with the consent of the Mediator, attend the Mediation with one or more persons to assist or advise that Party.
14. 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.
15. The Parties and any other persons (including legally qualified persons) attending the Mediation to assist and advise a Party in the Mediation will sign an acknowledgement and undertaking as to confidentiality as specified in Schedule 3.

Conduct of the Mediation.

16. The Mediation, including all preliminary steps, will be conducted in such manner as the Mediator considers appropriate having due regard to the view of each Party as to the manner in which the Mediation should be conducted, and the Mediator may give directions for the conduct of the Mediation including but not limited to:
 - (a) the holding of preliminary conferences;
 - (b) the exchange of experts' reports, the meeting of experts and the preparation of a joint experts' report; and
 - (c) the provision to the Mediator of any such or other relevant documents by no later than four clear working days prior to the commencement of the Mediation.
 - (d) By 5pm four clear working days prior to the commencement of the mediation, each party will serve on each other and provide to the Mediator a position paper together with sufficient supporting documentation to enable the Mediator to understand the nature and issues in the Dispute. The position papers should include a succinct outline of the Dispute, a summary of the evidence, what the Party providing the position paper perceives to be the issues; the arguments which each party propound in support of the issues and an analysis of the contrary arguments, not simply a rebuttal of them and a summary of the evidence relating to damages and a schedule of damages.

Communication between the Mediator and a Party.

17. The Mediator may communicate with a Party or the Parties orally or in writing.
18. The Mediator may, as frequently as the Mediator deems appropriate, meet with the Parties together or separately.
19. Information, whether oral or written, disclosed in confidence by a Party to the Mediator may not be disclosed by the Mediator to any other Party unless the Party by whom that information was disclosed consents to such disclosure.
20. The Parties acknowledge that the Mediator has the right to communicate with any person present at the Mediation, their representatives, or any person engaged in decision making in respect of the Mediation either jointly or separately, either in person, or by such other means of communication as the Mediator thinks fit.

Confidentiality.

21. The Parties will not, unless required by law to do so, disclose to any person not present at the Mediation, or use, any confidential information furnished during the Mediation unless such disclosure is to obtain professional advice or is to a person within the legitimate field of intimacy of the Party making the disclosure, and the person to whom the disclosure is made is advised at the time of disclosure that the confidential information is confidential.
22. The Mediator will keep confidential all information furnished by a Party on a confidential basis to the Mediator unless required by law to disclose such information.
23. The parties and the Mediator agree that the Mediator will require each participant in the Mediation to sign a confidentiality undertaking with respect to the mediation.

Privilege.

24. Subject to Clause 29, in any arbitral or judicial proceedings the following will at all times be kept confidential and will be privileged, and the Parties and the Mediator will not disclose or rely on them or issue or cause to be issued any subpoena to give evidence or to produce documents concerning them:
 - (a) any settlement proposal;
 - (b) the willingness of a Party to consider any such proposal;
 - (c) any statement, admission or concession made by a Party;
 - (d) any statement made by the Mediator; and
 - (e) any document prepared exclusively for the purpose of the Mediation except this Mediation Agreement.
25. The Parties agree that any privilege or confidentiality attaching to any document used or disclosed by any Party in relation to the Mediation is not waived by virtue of its use for the purpose of the Mediation.

Termination.

26. Subject to any order of a court of competent jurisdiction, the Mediation will terminate when:
 - (a) a settlement agreement is signed in respect of the Dispute;
 - (b) a Party gives written notice of termination to the other Parties and the Mediator; or
 - (c) if the Mediator forms the view that the Mediator will be unable to further assist the Parties to achieve a resolution of the Dispute, by the Mediator, after consultation with the Parties, then declining in writing to the Parties to continue as Mediator.

27. Neither the termination of the Mediation nor the cessation of the Mediator's engagement will affect the enforcement of accrued rights or the Mediator's authority to take any step required by law.

Settlement.

28. If the Parties agree to resolve the Dispute, a note of the essential terms of the settlement must be signed by or on behalf of the Parties before they leave the Mediation.

Enforcement.

29. Any Party will be at liberty:

- (a) to enforce the terms of a settlement agreement reached at the Mediation;
- (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.

30. The Mediator will not accept appointment as an arbitrator or act as an advocate in, or provide advice to a Party to, any arbitral or judicial proceeding relating to the Dispute.

Exclusion of Liability.

31. 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 such act or omission is fraudulent.

32. The Parties and the Mediator agreed that the Mediator has, in the exercise of his or her functions as a Mediator in relation to the Dispute, the same protection and immunity as if he was a judicial officer of the court exercising functions as a judicial officer whether or not the Mediation is a Mediation to which section 23 of the Civil Procedure Act, 2005 (NSW) applies.

33. None of the Parties to this agreement will call the Mediator as a witness.

34. 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.

35. No statement or comments, whether written or oral, made or used by the Parties or their representatives or the Mediator within the Mediation will be relied on to found or maintain any claim for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

Signed: Print Name: Date:

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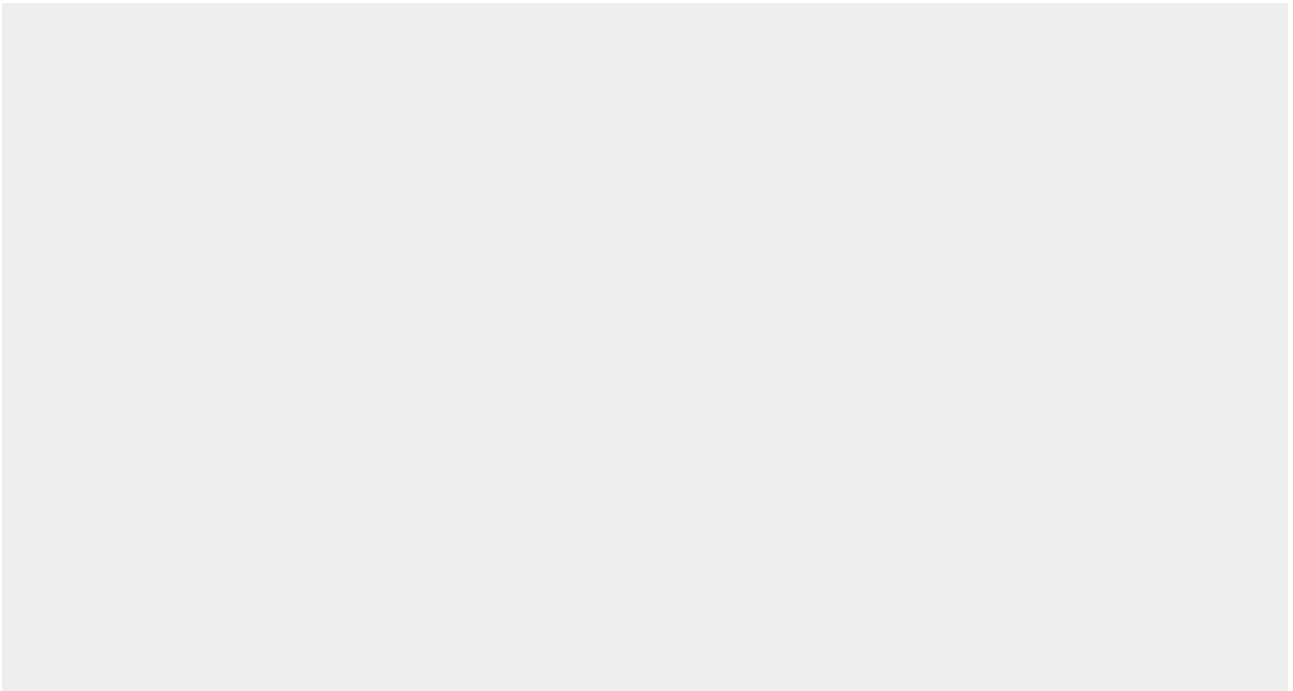
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FINDING RESOLUTION.

Schedule 1.

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



Schedule 2.

Mediator's Fees and Expenses.

1. **For attendance at the mediation:**
\$5,000 day plus GST.
\$3,000 half day plus GST.
2. **Accommodation, meals and travel expenses (if applicable):**
At cost.
3. **Room hire fees (if applicable):**
At cost.

Allocation of Costs including Mediator's Fees and Expenses.

Costs and expenses of the Mediation:

To be paid by both Parties in equal shares (clause 11).

A.

FINDING RESOLUTION.

Schedule 3.

Acknowledgement and Undertaking.

Between

And

(the Parties)

And

Adair Donaldson

(the Mediator)

The Parties and the Mediator have entered into a Mediation Agreement dated: in accordance with which the Mediator will conduct a mediation.

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:
 - (a) any settlement proposal;
 - (b) the willingness of a Party to consider any such proposal;
 - (c) any admission or concession made by a Party;
 - (d) any statement made by the Mediator;
 - (e) any document prepared exclusively for the purpose of the Mediation except this Mediation Agreement;
 - (f) any document used or disclosed by a Party for the purpose of the Mediation unless that Party waives privilege over such document.

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FINDING RESOLUTION.

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FINDING RESOLUTION.