

SYDNEY MEDIATION CENTRE

MEDIATION AGREEMENT

Dated:

Parties:

Between: [insert party] _____

And [insert party] _____

(Each a "party" and together the "parties")

And Michael Sommerton "the Mediator" c/- Sydney Mediation Centre t/as Proelio Consulting
ACN 656 958 226

The Parties have requested the Mediator, and the Mediator has agreed, on the terms of this Agreement to assist the Parties in their attempts to resolve a Dispute.

The Mediation

1. The Parties wish to solve a dispute between them by way of mediation.
2. Mediation is a meeting between the parties to a dispute, (including their legal representatives if applicable and / or those with a legitimate interest in the dispute), and facilitated and convened by the Mediator
3. The Mediator is a neutral and independent party who assists the parties both jointly and separately through all stages of the process.
4. The Parties and the Mediator agree to comply with the terms of this mediation agreement.

The Process

5. The Parties appoint the Mediator, and the Mediator accepts the appointment, to mediate the Dispute to assist to achieve resolution of the dispute between them.
6. The Mediator will assist the Parties and participants 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.
7. If the Mediator is of the view that it may assist the parties in their discussions then, as well as facilitating negotiations between the parties and if requested by either or each of the parties, the Mediator may also evaluate the merits of the dispute and provide suggestions as to its resolution. In doing so, however, the Mediator will not:
 - (i) impose a resolution on any party; or
 - (ii) be unduly coercive of parties in attaining a resolution; or
 - (iii) make any decision on behalf of any party.
8. Should the Mediator express any opinions, statements, and recommendations, these are not binding on the parties and do not constitute advice in any way.
9. The Mediator must, prior to the Mediation, disclose any prior dealings with the parties, as well as any actual or potential interest in the Dispute or its resolution.
10. If during the Mediation the Mediator becomes aware anything that might reasonably 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. The Parties will then decide whether the Mediation will continue with that Mediator or with a new Mediator appointed by the parties.
11. 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. Payment of the mediators fee remains payable.

12. The Mediator will not accept an appointment to act for any party in relation to proceedings concerning this dispute.

Co-operation, Costs and Mediator's Fees

13. The Parties and all participants agree to participate in the Mediation with a view to negotiating in good faith towards achieving a settlement of this Dispute.

14. Each Party and their representatives will comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Dispute.

15. Each Party will meet its own costs of and in connection with the Mediation, unless agreed otherwise.

16. Irrespective of the outcome of the Mediation, the Parties will pay the Mediator's fees and disbursements as specified in Schedule A and unless otherwise agreed on an equally shared basis.

17. Each party must be represented at the Mediation by a person or persons having or able during the mediation to obtain authority to settle the Mediation

18. All communications in respect of the mediation are privileged and therefore not admissible in evidence in any proceedings before any court or other body.

Conduct of the Mediation

19. The Mediation, including all preliminary steps, shall be conducted in such manner as the Mediator considers appropriate (having due regard to the view of each Party as to the way the Mediation should be conducted), for example in relation to:

- (i) the holding of preliminary conferences;
- (ii) the exchange of written outlines of the views of the Parties on the issues raised by the Dispute;
- (iii) the exchange of experts' reports, and other key evidence.
- (iv) provision to the Mediator of any such outlines, reports, and key evidence.

Communication

20. The Mediator may communicate with a Party or the Parties orally or in writing.
21. The Mediator may as frequently as the Mediator deems appropriate meet with the Parties together or separately.
22. Information, whether oral or written, disclosed in confidence by a Party to the Mediator need not be disclosed by that Party, and may not be disclosed by the Mediator to any other Party unless the Party by whom that information was disclosed, consents to such disclosure.

Confidentiality

23. The parties agree that as a condition being present and participating in mediation they will, unless otherwise compelled by law, preserve confidentiality in relation to the course of proceedings with the mediation.
24. Any persons in addition to the Parties (including legally qualified persons) attending the Mediation to assist and advise a Party in the Mediation shall sign an acknowledgement and undertaking as to confidentiality, or "Confidentiality Agreement", as specified in Schedule B.
25. The Parties, including all persons participating in and/or attending the Mediation 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 knowledge, and the person to whom the disclosure is made is advised that the information is confidential.
26. The Mediator agrees:
 - (i) to keep confidential all information furnished by a Party to the Mediator on a confidential basis;

- (ii) save with the consent of the Party who furnished such information not to disclose the information to any other Party.

27. The Parties understand that some documents given by them to the Mediator for the Mediation may be discoverable by a party in Court proceedings, and the mere fact that they have been introduced into the Mediation process does not make them confidential.

28. No party to the mediation shall use any recording devices during the Mediation whether audio or visual and a breach of this agreement shall render the contents of any recording of no effect for any purpose and inadmissible as evidence of any part of the Mediation.

29. The Parties agree that they shall not at any time before, during or after the Mediation, call the Mediator or anyone associated with the Mediator as a witness, nor subpoena them, nor to demand the Mediator disclose any of the documents and/or information produced in the Mediation, nor to demand the production of any records, notes or the like of the Mediator in any legal proceedings concerning the dispute between the Parties.

Documentation

30. The Mediator will destroy all documentation other than the Mediation and Confidentiality Agreement and any settlement agreement.

Privilege

31. Every aspect of every communication within the Mediation shall be “without prejudice”.

Termination

32. If during the Mediation the Mediator determines that it is not appropriate to continue with the process for any good reason, the Mediator may terminate the Mediation, without specifying such reason. The Mediator will advise each of the parties in person and later confirm such termination in writing.
33. Either of the Parties may terminate the Mediation at any time however, before doing so, they will discuss their intention to terminate with the Mediator in a private individual session.
34. In the absence of such notice by a Party or the Mediator 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.

Enforcement

35. If the settlement agreement arising out of the Mediation is expressed or agreed to be binding on all the parties, any party may enforce the terms of the settlement agreement by judicial proceedings.
36. For the purposes of enforcing an agreement of the Mediation any party may call evidence of the settlement agreement including evidence from the Mediator and any party to the Mediation.

Exclusion of Liability and Indemnity

37. The Mediator will not be liable to a Party for any views, opinions or recommendations expressed by the Mediator, nor for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement.
38. The Parties together and separately indemnify 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.

39. 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.

SCHEDULE A

Mediator's Fees & Expenses

January 2022

Item 1 – Full day Mediation – 2 parties 1 day mediation for up to 7 hours – \$2900.00 + GST including travel within Sydney Metro area and premediation activity

Half day mediation – 2 parties half day mediation at up to 3.5 hours - \$1500 + GST including travel within Sydney Metro area and premediation activity

Item 2 - Any applicable expenses – e.g.: venue hire, courier, accommodation, and travel expenses (economy class) for any travel over 60km from Sydney CBD - At cost

Notes:

1. The Mediation fee is charged at a flat rate and is inclusive of all preliminary conferences (in person or by telephone), premediation activity, reading, preparation and travel time.
2. Cancellation fee: The parties will be jointly liable for their respective shares of the mediator's costs if cancellation by any or both parties occurs less than 7 business days before the mediation date at 50% of the fee plus any expenses incurred at the date of cancellation.
3. A prepayment of \$325 plus GST per party is required prior to the commencement of the mediation. The balance is invoiced and payable within 14 days.
4. The costs are to be shared equally between the parties and billed on a pro-rata basis, unless agreed otherwise.
5. Half day sessions that go over the 3.5 hour session allocation or will incur an additional hourly rate of \$450 + GST applied to all preparation and mediation time, with the total charge not to exceed the daily flat rate.
6. Payment is due within 14 days of the date of the invoice. Payment is liable irrespective of the outcome of mediation.

I/we agree to payment of Mediator Fees in accordance with this Mediation Agreement and Schedule A.

_____ (Print Name) _____ (Sign) _____ (Date)

_____ (Print Name) _____ (Sign) _____ (Date)

SCHEDULE B

CONFIDENTIALITY AGREEMENT

For the MEDIATION commencing: _____(date)

1. The undersigned acknowledge by their signatures that they attend the Mediation, in accordance with the terms of clauses below.

2. Each of the undersigned undertakes to the Parties and the Mediator:

(i) to keep confidential to themselves all information disclosed during the Mediation including the preliminary steps (“confidential information”);

(ii) not to act contrary to this undertaking unless compelled by law to do so or with the consent of the Party who disclosed the confidential information;

(iii) not to use confidential information for a purpose other than the Mediation.

(iv) they accept 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.

4. 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.

Signed by the Parties of the Mediation :

Signed: Date / /

Date / /

Full Name: _____

Full Name:_____