

AGREEMENT TO MEDIATE

Dated/...../2011

Between

(The first party)

And

(The second party)

And

(The Third party)

(add more parties as required here)

And

William Hursthouse (the mediator)

IT IS AGREED THAT:

Appointment of the mediator

- 1) The parties listed above appoint **William Hursthouse** to mediate issues in connection with the description of the dispute in Schedule 1, attached to this agreement.
- 2) The mediator accepts the appointment at the time and place set out in Schedule 2

The Mediation:

- 3) The mediation shall comprise all steps taken to attempt to resolve the dispute by mediation, whether prior to or subsequent to the signing of this agreement.

Role of the mediator and parties

- 4) The mediator and the parties will work together to resolve the dispute. The process will include:
 - Identifying and clarifying issues in dispute
 - Identifying the interests of each party
 - Developing options to resolve the matters in dispute
 - Considering the proposed solutions and how they might impact on the parties
 - Reaching an agreement that accommodates the needs and interests of all parties
- 5) The mediator will be neutral and impartial; the mediator will not:
 - Make any decisions for any of the parties
 - Advise any party on what choices they should make, or on what the legal position might be
 - Take any part in any future dispute resolution forum, if the dispute does not settle at mediation (e.g. cannot arbitrate, or give evidence)

- 6) We understand that the mediator may conduct joint and separate meetings with any or all of the parties at any time before or during the mediation. The content of any separate discussions will be confidential between the mediator and the party concerned, unless otherwise authorised

Conduct of the parties

- 7) The parties will work in good faith with both the mediator and the other parties. They will be honest with the mediator and with each other.
- 8) Each party will comply with the reasonable requests of the mediator regarding their conduct in the mediation.
- 9) By signing below the parties each agree they have full authority to sign any agreement reached at the conclusion of the mediation.

Confidentiality

- 10) Anything disclosed during the mediation will be treated by the mediator and all parties as confidential and will not be disclosed unless authorised by the party making the disclosure, with the following possible exceptions:
- 11) If the mediator is informed of a threat to anyone's life, safety or property; or of such events having already occurred the mediator may break confidentiality to allow for the prevention or detection such offences.

Privilege

- 12) The parties agree that anything offered, discussed, admitted, created or disclosed during the mediation will be privileged and shall not be raised in any subsequent hearing if the matter does not settle at mediation, excepting:
 - a. As above, criminal acts, threats
 - b. This privilege cannot be used to prevent information which is in the public domain (i.e. information existing independently of the dispute) being presented at a subsequent hearing
 - c. This agreement to mediate and any written agreement created as a result of the mediation may be subsequently used by the parties in any enforcement proceedings if required.
 - d. If all parties agree
- 13) The parties and non parties – everyone who attends the mediation – shall sign a Confidentiality Agreement. Parties are to sign this "Agreement to Mediate", non parties are to sign the "Confidentiality Agreement" in Schedule 3.

Settlement

- 14) If settlement is reached, it is preferable that this is recorded in writing and signed by the parties before the session is terminated. If legal advice is required and not available, signing a "Heads of agreement" or "Memorandum of Understanding" will be sufficient and the parties agree to be bound by such an agreement.
- 15) No agreement which is not in writing shall be binding on the parties.

Liability

16) The parties jointly and severally release, discharge and indemnify the Mediator (and/or any assistant to the Mediator) in respect of all liability of any kind whatsoever (whether involving negligence or not) which may be alleged to arise in connection with or to result from or to relate in any way to this mediation.

Payment

17) The parties jointly and severally agree to pay the Mediator not later than seven days after the conclusion of the mediation a fee of \$..... plus GST together with travel, accommodation, meeting room costs and other disbursements.

18) The parties agree to share the mediator's costs equally between them.

Termination

19) The mediation is deemed to have terminated after any of the following occurs:

- o The parties reach agreement
- o One party withdraws
- o The mediator terminates the mediation. The mediator has absolute discretion to terminate the mediation if he has ethical, professional or other sound reasons for believing it is not appropriate to continue.

20) No form of termination will relieve any party of their obligation to pay the mediator's fees and expenses.

Variation

21) The parties may only vary this agreement in writing.

I understand and agree to each of the provisions of this agreement:

Mediator: William Hursthouse / /
Signature Date

Name of Party / /
Signature Date

Name of Party / /
Signature Date

Name of Party / /
Signature Date

SCHEDULE ONE: Description of the dispute

All matters in dispute between the parties relating to.....

SCHEDULE TWO: Time and location of mediation

The mediation will take place on/...../2011 at starting at

SCHEDULE THREE: Confidentiality Agreement

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

This agreement to keep confidential all that I see or hear regarding this dispute at the mediation 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. This includes the advisors and insurers of that party provided always that any such disclosures and discussions will only be on this same basis of confidentiality.

Name of Party Signature/...../..... Date

Name of Party Signature/...../..... Date

Name of Party Signature/...../..... Date