

D S Mediation

Daan Spijer LLB GradDipFDR

M: PO Box 909, Mt Eliza Vic 3930

T: 0409 952 403

E: daan.spijer@gmail.com

W: www.DSMediation.com.au



Mediation Agreement

This agreement for mediation (**this Agreement**) is made between Daan Spijer (**the Mediator**) and each of the two parties (**the Parties**) whose names and signatures appear at the end of this Agreement.

This Agreement is made on the _____ 20__.

Mediation Process

1. The **Mediation** process referred to in this Agreement is a voluntary process by which the Parties, with the assistance of the Mediator, systematically isolate issues in dispute (**the Dispute**), develop options for the resolution of those issues, explore the usefulness of those options and consider alternatives with the aim of reaching an agreement that accommodates the interests and needs of the Parties and has the effect of resolving the Dispute or of agreeing on some of the issues. The Dispute is briefly described in Schedule 1 to this Agreement but is not limited by that description.

Appointment of Mediator

2. The Parties appoint the Mediator to mediate the Dispute in accordance with the terms of this Agreement. The Mediator accepts this appointment.

Payment of Fees

3. The fee to be paid for the Mediation (**Mediation Fee**) is the amount set out in Schedule 2 and this shall be paid by the Parties in a manner directed by the Mediator with each Party paying 50% of the fee.
4. The Mediation Fee is non-refundable except, at the discretion of the Mediator, in the event of the Mediation not proceeding.
5. The Mediation Fee is not refundable if the Mediation proceeds and no Terms of Settlement is signed by the Parties.
6. **Other Fees**
 - 6.1 The Mediator may charge the **Preparation Hourly Fee** set out in Schedule 2 and the Parties agree to pay such fee if charged.
 - 6.2 If a venue needs to be hired for the Mediation, the Parties agree to pay this fee (**Venue Costs**).
 - 6.3 In the event that the Mediation extends beyond the time set aside for its conduct as indicated in Schedule 2 (the **Expected Duration**), the Parties agree to pay **the Mediation Hourly Fee** set out in Schedule 2 for any such extended time, subject to the Mediator's right to waive any or all of the Mediation Hourly Fee.
 - 6.4 If the Mediator needs to travel further than 100 kilometres from Mount Eliza to conduct the Mediation, the Parties agree to reimburse him for the costs of travel and any accommodation he may require (**Travel Costs**).
 - 6.5 If payable, the Parties agree to pay 50% each of the Preparation Hourly Fee, Venue Costs, the Mediation Hourly Fee and Travel Costs.

Role of the Mediator

7. The Mediator will:
 - 7.1 be neutral and impartial;
 - 7.2 not make decisions for either Party or impose a solution on the Parties;
 - 7.3 not bind the Parties by any comments, suggestions or statements made by the Mediator;
 - 7.4 not give legal, financial or other professional advice to either Party;
 - 7.5 not arbitrate between the Parties or make any rulings in relation to the issues in dispute between the Parties;
 - 7.6 not act as an advocate for either Party; and
 - 7.7 throughout the Mediation, determine when he may meet with the Parties together or separately.

Commitment to Mediation

8. Each Party agrees to co-operate with the Mediator and the other Party in the Mediation with a commitment to negotiate towards achieving a resolution of the dispute.
9. The Parties acknowledge each other's right to be heard and agree to behave with courtesy and respect towards every person participating in the Mediation.
10. Once a date or dates have been set for the Mediation, any changes may only be made with the consent of the Mediator and both Parties.

Conflict of Interest

11. The Mediator must, prior to the commencement of the Mediation, disclose to the Parties to the best of his knowledge any prior dealings with either of the Parties as well as any interest in the Dispute.
12. If, during the Mediation, the Mediator becomes aware of any circumstances that may affect his capacity to act impartially, he will, to the extent that he may do so, immediately inform the Parties of this situation.

Confidentiality

13. To the extent allowed by law, the Mediator and the Parties agree to keep confidential all information and documents concerning the Dispute which are disclosed during the course of the Mediation. Any disclosures, exchanges and all aspects of any communication occurring within the Mediation shall be 'without prejudice'.
14. Subject to any limits imposed by law, the Parties and the Mediator agree that the following will be privileged and will not be disclosed or be the subject of a subpoena to give evidence or to produce documents in any proceedings in respect of the Dispute:
 - 14.1 any settlement proposal made in the course of attempting to resolve the Dispute, whether such proposal be made by a Party or by the Mediator;
 - 14.2 the willingness of a Party to consider or accept any such settlement proposal;
 - 14.3 any admission or concession made within the Mediation by a Party;
 - 14.4 any views expressed, suggestions made or exchanges passing (orally or documentary) between either of the Parties and the Mediator or between the Parties themselves;
 - 14.5 documents brought into existence for the purpose of the Mediation that have not been or are otherwise incapable of being discovered or subpoenaed for the purposes of trial.

Communication between the Mediator and the Parties

15. Any information disclosed by a Party to the Mediator in private is to be treated as confidential by the Mediator unless the Party who makes the disclosure authorises the Mediator to disclose the information.
16. The Mediator may communicate with the Parties or their representatives or both, separately or in conference, before the Mediation in order to agree on:
 - 16.1 the suitability of the matter for mediation;
 - 16.2 the collation, disclosure and presentation of documentation and other material for use in the Mediation;
 - 16.3 the setting of a time, date and venue for the Mediation;
 - 16.4 any other planning or administrative arrangements and considerations to enable the Mediation to take place.

Authority to Settle

17. Before the Mediation commences, in order to come to the Mediation fully informed, each Party will seek any relevant professional advice in relation to:
 - 17.1 legal matters, including:
 - 17.1.1 the likely costs of the Dispute being taken to a court or tribunal; and
 - 17.1.2 the prospects of success if the Dispute were to be taken to a court or tribunal;
 - 17.2 financial matters;
 - 17.3 taxation matters, including the taxation implications of possible settlement scenarios;
 - 17.4 anything else that may affect that Party's ability to negotiate and settle the Dispute.
18. Each Party shall attend the Mediation with full authority to negotiate and settle the Dispute and to enter into a binding agreement. This includes written authority to negotiate and settle on behalf of:
 - 18.1 any fellow company or organisation directors;
 - 18.2 any members of the Party's family;
 - 18.3 any other person with an interest in the outcome of the Mediation.
19. The term 'full authority' in clause 18 means authority to settle within any range and on any terms that may reasonably be anticipated.
20. If, during the Mediation, a Party needs to seek further advice or authority, the Mediator will facilitate this as far as is practicable.

Representation at Mediation

21. At the Mediation, each Party may be accompanied by one or more 'support' people, including a lawyer or other professional advisor, provided the other Party consents to such support people being present.
22. If a Party objects to the other Party being accompanied at the Mediation by support people, the objecting Party will lose the right to be accompanied by any support people.
23. Anyone attending the Mediation who is not a Party, may only attend after signing a third-party confidentiality agreement.
24. The Mediator may direct if and when any support person may speak at the Mediation.

Settlement of the Dispute

25. In the event that the Dispute is settled, a settlement agreement (**Terms of Settlement**) shall be drafted by the Parties, written down and signed by the Parties and the Mediator prior to the end of the Mediation. The Mediator will not draft the Terms of Settlement.
 - 25.1 If a person present at the Mediation, not being a Party, has appropriate authority to do so, that person may sign the Terms of Settlement on behalf of a relevant Party.
 - 25.2 If the Dispute is settled, neither Party may leave the Mediation until the Terms of Settlement is signed by both of them, unless another person present at the Mediation is to sign on that Party's behalf under clause 25.1.

Enforcement of Terms of Settlement

26. Either Party will be at liberty to enforce the Terms of Settlement referred to in clause 25 by judicial proceedings and for those purposes, any Party may call evidence of the Terms of Settlement.

Adjournment or Termination of Mediation

27. The Parties and the Mediator may mutually agree to an adjournment of the Mediation.
28. The Mediator may terminate his involvement in the Mediation if, after consultation with the Parties, the Mediator decides he is unable to further assist the Parties to achieve resolution of the Dispute.
29. Either Party may terminate the Mediation at any time after consultation with the Mediator.
30. If the Mediation is terminated without the drafting and signing of Terms of Settlement, any future mediation of the Dispute between the Parties will be a new mediation and not a continuation of the current Mediation.

Exclusion of Liability and Indemnity

31. The Mediator will not be liable to either Party for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
32. The Parties together and separately indemnify the Mediator against any claim for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
33. If a Party requires the Mediator to give evidence in a court or tribunal concerning anything said or done in the course of the Mediation, or to produce documents created for the purpose of or during the Mediation, that Party will:
 - 33.1 indemnify the Mediator for all costs and expenses incurred by the Mediator (including the Mediator's legal costs and any legal costs the Mediator is ordered to pay to any other person, such legal costs to be assessed on a solicitor-client basis) in connection with the appearance at the court or tribunal, the giving of evidence or the production of the documents; and
 - 33.2 pay the Mediator at the **Hourly Rate** specified in Schedule 2 for the time expended by the Mediator in connection with the appearance, the giving of evidence or the production of documents.

Schedule 1 – Brief description of the Dispute:

Schedule 2 – Mediation Costs

The **Mediation Fee** to be paid under clause 3 is \$_____.00 (inclusive of GST)

The **Expected Duration** of the Mediation is _____ hours

The **Preparation Hourly Fee** to be paid under clause 6.1 is \$_____.00 (inclusive of GST)

The **Mediation Hourly Fee** to be paid to the Mediator in relation to clause 6.3 is \$_____.00 (inclusive of GST)

The **Hourly Rate** to be paid by a Party under clause 33.2 is \$_____.00 (inclusive of GST).

Execution of Agreement

1.	Name of Party (please print):	
	Signature of Party:	

2.	Name of Party (please print):	
	Signature of Party:	

3.	Name of Mediator:	Daan Spijer
	Signature of Mediator:	