

MEDIATION AGREEMENT

THIS AGREEMENT DATED:

BETWEEN:

1. <2>
of <3>
2. <4>
of <5>
3. **Peter Russell Wilson**
of 303 Eddy Avenue, Mount Helen Victoria
("the mediator")

BACKGROUND

- A. A dispute has arisen between the parties ("the dispute").
- B. The parties have requested the mediator to help the parties resolve the dispute.

OPERATIVE PROVISIONS

1. Appointment of mediator

The parties appoint the mediator to mediate the dispute.

2. Role of mediator

The mediator will assist the parties in identifying concerns and interests, defining issues, setting priorities, generating options and generally assist the parties to resolve the dispute.

3. Conduct of mediation

- 3.1 The parties, and their advisers, acknowledge that they have read the annexed document "Conduct of Mediations" and confirm that so far as practicable they will observe the terms and the spirit of the approach to be taken in the mediation.
- 3.2 The parties agree:
 - (a) To enter the mediation with a commitment to attempt in good faith to negotiate towards achieving settlement of the dispute.

(b) To co-operate with the mediator and with each other in the conduct of the mediation.

3.3 The parties will not be bound by any comments, opinions, suggestions, statements or recommendations made by the mediator.

4. Authority and representation

4.1 If a party is a natural person, the party must attend the mediation. If a party is not a natural person it must be represented by a person with full knowledge of the relevant issues and authority to make agreements binding on it.

4.2 Each party is entitled to the assistance of legal representatives to assist and advise the party in the mediation.

5. Communications between the mediator and the parties

5.1 The mediator may meet the parties together or any party alone as frequently as the mediator deems appropriate.

5.2 Any document relied upon by a party and provided to the mediator will be promptly served by the party on the other party.

5.3 Information, whether oral or written, disclosed to the mediator by a party in the absence of the other party will be confidential, unless the party expressly permits it to be disclosed.

6. Confidentiality

6.1 The mediator, the parties, their legal representatives and all other persons who are present at or have been involved in the mediation at the request of a party will not under any circumstances disclose and, in particular, will not seek to use, rely on or introduce as evidence in any arbitration or judicial proceedings, whether or not the proceedings relate to this dispute:

(a) Any information disclosed whether oral or documentary concerning the dispute and passing between the parties and/or the mediator.

(b) Any views expressed, comments made or suggestions advanced by the mediator or any party in respect of any possible settlement of the dispute.

(c) Admissions made by any party.

(d) The fact that any party has indicated willingness to accept any proposal for settlement.

(e) Notes or statements made by the mediator or any party.

6.2 The mediator, the parties, their legal representatives and all other persons attending the mediation shall execute a **“Confidentiality Acknowledgement”** as detailed in Schedule 2.

7. Effects of the mediation

If the parties cannot resolve the dispute during the course of or as a result of the mediation the rights of the parties in any subsequent court or other proceeding shall remain unaffected by the mediation.

8. Termination

- 8.1 A party may withdraw from the mediation at any time.
- 8.2 If, after consultation with the parties, the mediator forms the view that he will be unable to assist the parties to resolve the dispute he may immediately terminate his engagement.

9. Restraints upon the mediator

- 9.1 The mediator will not accept appointment as an arbitrator in or act as a lawyer for or provide advice to any party to the dispute.
- 9.2 Where one or more of the parties to the mediation are legally represented, the mediator undertakes not to act for such party in a legal capacity.

10. Exclusion of liability and indemnity

- 10.1 The mediator will not be liable to a party, except in the case of fraud by the mediator, for any act or omission (whether negligent, misleading, deceptive or otherwise) by him in the performance of his obligations under this agreement.
- 10.2 The parties jointly and severally agree that the mediator is and shall be immune from suit to the same extent as a judge of the Supreme Court of a State of the Commonwealth.

11. Mediator's fee

- 11.1 The parties jointly and severally agree to pay the mediator fees and any other costs and expenses as detailed in Schedule 1.
- (a) Such fee and expense will be shared equally between the parties.
- (b) If requested by the mediator the parties agree to lodge such preliminary sum as detailed in Schedule 1 in advance of the mediation to meet the mediator's anticipated fees and expenses.
- (c) The lawyers (if any) for the parties undertake that they are personally liable for their client's proportion of the mediator's fees.

THE PARTIES AND THE MEDIATOR HAVE EXECUTED THIS AS AN AGREEMENT.

SIGNED by the said <2>

in the presence of:

.....
Signature

.....
Witness signature

SIGNED by the said <4>

in the presence of:

.....
Signature

.....
Witness signature

SIGNED by the said **PETER RUSSELL WILSON**

in the presence of:

.....
Signature

.....
Witness signature

SCHEDULE 1

Fees and Other Expenses (where applicable)

- (a) Full Day rate = \$3,300.00 (incl. GST)
- (b) Half Day rate = \$1,650.00 (incl. GST)
- (c) Hourly rate = \$420.00 (incl. GST)
- (d) The half day rate will apply regardless of time spent and includes costs of preparation and reading material.
- (e) In the event the mediation continues beyond a half day the hourly rate will be charged in addition to the half day rate.
- (f) In the event the mediation continues beyond 5.30 pm for a full day the hourly rate will be charged in addition to the full day rate.
- (g) Preliminary payment: As per Tax Invoice.

SCHEDULE 2

Confidentiality Acknowledgement

I, the undersigned wish to take part in or be present at the mediation with the consent of the mediator and the parties.

I agree that in relation to all information disclosed during the mediation whether oral or documentary,

- (a) To keep that information confidential;
- (b) Not to disclose that information except to a party or a representative of that party participating in the mediation and
- (c) Not to use that information for a purpose other than the mediation.

I further agree with the parties and the mediator that the following matters 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 arbitration or judicial proceeding in respect of the dispute or in any other proceedings.

- (a) Any information disclosed whether oral or documentary;
- (b) Any views expressed, comments made, or suggestions advanced by the mediator or any party;
- (c) Admissions made by any party;
- (d) The fact that any party has indicated willingness to accept any proposal for settlement;
- (e) Notes or statements made by the mediator or any party.

DATED the day of 2016

SIGNED by
in the presence of:

Full name of signatory

Address

Occupation

<2>

- and -

<4>

- and -

Peter Russell Wilson

MEDIATION AGREEMENT

Peter R Wilson
Mediator

303 Eddy Avenue, Mt Helen Victoria

Telephone: (03) 5331 4444

Mobile: 0419 114 961

Email: pwilson@nevetts.com.au

PRW 9/1674324

CONDUCT OF MEDIATIONS

Terms of mediation

The parties propose to enter into mediation with the intention of reaching consensual settlement of the dispute.

Mediation is a process and set of principles designed to manage and resolve disputes between parties.

It is essentially a process by which the parties, with the assistance of a third party mediator, attempt to define issues, identify, and through structured negotiations, reach a settlement.

Mediation is proving a more efficient method of dispute resolution than other processes and can help preserve relationships through the intervention of a third party. Mediation provides the opportunity for parties to discover the interests and concerns of each, to define the dispute more clearly, and to agree on procedures or methods of resolving substantive issues. It forces the parties themselves to confront the dispute and assist them in resolving it to their own satisfaction.

The parties, and those attending the mediation with them, should agree and understand that the mediation is conducted on the following terms:

- . The mediator is a facilitator who will assist the parties to reach their own settlement. He will not make decisions for the parties or tell them what to do.
- . Despite the mediator's legal qualifications he does not offer legal advice.
- . Once the mediator has acted as a mediator in a dispute he cannot subsequently act for either party as a lawyer.
- . For the mediation to work the parties must co-operate in good faith with the mediator and each other and use their best endeavours to comply with the reasonable requirements of the mediator.
- . Full open and honest communication is essential to mediation and accordingly all communication whether oral or in writing, statements made, negotiations and offers made in the course of mediation will be treated as absolutely confidential. If complete and honest disclosure is not made by each of the parties to each other and to the mediator then any agreement reached in mediation might be at risk of being set aside in later court proceedings.
- . Whilst the parties have agreed to use the mediation process with a view to reaching settlement it is to be understood that parties can withdraw from the mediation at any time or the process can be terminated if it is not possible to resolve issues.

The mediator will consider all preliminary steps which might need to be conducted and for agreed goals as to the efficient and expeditious resolution of the dispute at mediation.

Legal Advisers

Legal and other advisers either prior to or at the time of mediation can take such part in the mediation as the parties wish. However the mediation is conducted as an informal conference with the parties themselves seeking to resolve their dispute. The parties themselves ought be free to engage in a frank and complete exchange of views about the dispute and the way in which it might be resolved. Legal advisers are not present as advocates or to engage in an adversarial contest but rather to assist the mediator and the parties towards resolving their dispute. An adviser who does not understand this may be a direct impediment to the mediation process.

The role of the legal adviser is:

- To advise and assist their client as instructed and as the client wishes.
- To discuss with other legal advisers and their respective clients legal and practical issues as the mediator might suggest or the clients might wish.
- If settlement is reached, to prepare terms of settlement recording the agreement and secure the signature of the parties.

Parties

As provided for in the mediation agreement the parties to the dispute must be present. If a party is not a natural person or for some other good reason cannot be present (if for example an insurance company is involved) then a party should be represented by a representative with full authority and knowledge to engage in the process and to settle the dispute. The representative should not be subject to any limitation or restriction of authority to settle. Corporations are ordinarily represented by their chief executive or other senior person who has total authority in the dispute. When it is recognised that an intensive mediation has a high prospect of settling a dispute that might otherwise occupy a considerable period of time in a court hearing then the time devoted by such senior personnel is justified.

Some mediations fail as they are seen by one or more of the parties, or their representatives, as merely involving settlement discussions and representatives are sent with limited authority. This approach inhibits the value of mediation.

At the heart of the mediation process is the opportunity for each party to make an objective reappraisal of the whole dispute. Once more fully informed of the other party's position and interests, and your own position and interest, then more likely the opportunity of options for settlement. Thus a predetermined limit on the authority of a representative denies that party the full benefit of an on-the-spot informed reappraisal of the dispute and inhibits the prospect of a successful outcome.

Peter R Wilson
Mediator
ABN 88 989 882 030
303 Eddy Avenue, Mt Helen Victoria
Telephone: (03) 5331 4444
Mobile: 0419 114 961
Email: pwilson@nevetts.com.au
PRW 9/1674324

24 November 2016

<10>
<11>
<12>

Dear Sirs

Mediation. <2> & <4>

I confirm my appointment as mediator with the mediation arrangements as follows:

Date: <6>

Venue: <7>

Duration: Full day rate as per schedule to mediation agreement.

Fee: \$3,300.00 (inclusive of GST)

Documentation

I await relevant documentation that the parties would like me to read prior to the mediation.

Preliminary Conference

In some cases a preliminary conference, either in person or by telephone, can be useful. If the parties require a preliminary conference then please contact me.

Mediation Agreement

I enclose:

1. Mediation Agreement; and
2. Tax Invoice.

Please have the agreement executed and returned to me prior to the mediation. Should any non-party be attending the mediation would you have them complete the "Confidentiality Acknowledgement" in Schedule 2 of the agreement and return to me.

Duration/Fees

My costs are detailed in Schedule 1 to the mediation agreement.

I have assumed a full day booking rate and your share of fees is thus \$1,650.00, payable pursuant to the enclosed tax invoice prior to the mediation date.

I look forward to conducting the mediation and if you have any queries in the meantime please contact me.

Yours faithfully

Peter R Wilson
Direct Dial: 03 5337 0252

Encl.

Peter R Wilson
Mediator
ABN 88 989 882 030
303 Eddy Avenue, Mt Helen Victoria
Telephone: (03) 5331 4444
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24 November 2016

<13>
<14>
<15>

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<10>
<11>
<12>

TAX INVOICE
12 April 2017
Invoice No: 001

Matter: Mediation. <2> & <4>

Description:

My costs of acting as mediator including attendances upon the parties to confirm appointment and making arrangements for conduct of mediation. Preparation of the mediation agreement and correspondence with the parties. Reading documentation. General preparation for mediation. Conduct of mediation and subsequently advising the relevant court or tribunal of the outcome.

Your client's share, excluding GST:	\$1,500.00
GST:	\$150.00
Balance due:	\$1,650.00

Peter Russell Wilson

REMITTANCE ADVICE

1. Cheque Please return this advice with your cheque for \$1,650.00 to:

Mr PR Wilson
303 Eddy Avenue
Mount Helen Victoria 3350

Reference: Inv. 001

2. EFT National Australia Bank
P R Wilson
BSB: 083 526
Account No: 694 320 032
Reference: Inv. 001

Peter R Wilson
Mediator
ABN 88 989 882 030
303 Eddy Avenue, Mt Helen Victoria
Telephone: (03) 5331 4444
Mobile: 0419 114 961
Email: pwilson@nevetts.com.au
PRW 9/1674324

<13>
<14>
<15>

TAX INVOICE
12 April 2017
Invoice No: 002

Matter: Mediation. <2> & <4>

Description:

My costs of acting as mediator including attendances upon the parties to confirm appointment and making arrangements for conduct of mediation. Preparation of the mediation agreement and correspondence with the parties. Reading documentation. General preparation for mediation. Conduct of mediation and subsequently advising the relevant court or tribunal of the outcome.

Your client's share, excluding GST:	\$1,500.00
GST:	\$150.00
Balance due:	\$1,650.00

Peter Russell Wilson

REMITTANCE ADVICE

1. Cheque Please return this advice with your cheque for \$1,650.00 to:

Mr PR Wilson
303 Eddy Avenue
Mount Helen Victoria 3350

Reference: Inv. 002

2. EFT National Australia Bank
P R Wilson
BSB: 083 526
Account No: 694 320 032
Reference: Inv. 002

**MEDIATION AGREEMENT, LETTER & TAX INVOICE
VARIABLE SHEET**

1. AGREEMENT

- <1> Date of agreement
- <2> First party
- <3> First party address
- <4> Second party
- <5> Second party address

2. LETTER

Appointment details:

- <6> Date
- <7> Venue
- <8> Share of fee

First party details:

- <9> Reference
- <10> Name
- <11> Street address
- <12> Suburb and postcode

Second party details:

- <13> Name
- <14> Street address
- <15> Suburb and postcode

3. TAX INVOICE

Tax Invoice Sheet to be handed to Accounts for them to produce Invoice.