

AGREEMENT TO MEDIATE



Mediation is: "The process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and reach a consensual agreement that will accommodate their needs."

Folberg & Taylor

THIS AGREEMENT IS MADE ON THE _____, 20____
(day) (month) (year)
BETWEEN THE FOLLOWING DISPUTING PARTIES (together called "the parties")

(Name of Party: Please Print)

(Address)

(Name of Party: Please Print)

(Address)

(Name of Party: Please Print)

(Address)

(Name of Party: Please Print)

(Address)

(Name of Party: Please Print)

(Address)

AND THE MEDIATOR/S (called "the mediator/s)

DANIEL PATRICK O'KEEFE

(Name of Mediator: Please Print)

176B Brisbane Street, DUBBO, N.S.W., 2830

(Address)

(Name of Mediator: Please Print)

(Address)

APPOINTMENT OF MEDIATOR

1. The parties appoint the mediator to mediate in accordance with the terms of this agreement the dispute between them. The dispute is briefly described in Schedule 1 to this agreement (the "Dispute"). The mediator accepts that appointment.

ROLE OF THE MEDIATOR

2. The mediator will be neutral and impartial. The mediator will assist the parties to attempt to resolve the dispute by helping them to:
 - systematically isolate the issues in dispute;
 - develop options for the resolution of these issues;
 - explore the usefulness of these options; and
 - meet their interests and needs.
3. The mediator may meet with the parties together or separately.
4. The mediator will **not**:
 - give legal or other professional advice to any party; or
 - impose a result on any party; or
 - make decisions for any party.
5. The mediator will not accept an appointment in relation to any proceedings concerning the Dispute.
6. Neither party will take action to cause the mediator to breach Clause 5.

CONFLICTS OF INTEREST

7. The mediator must prior to the commencement of the mediation disclose to the parties to the best of the mediator's knowledge any prior dealings with any of the parties as well as any interest in the Dispute.
8. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially, the mediator must immediately inform the parties of these circumstances. The parties will then decide whether the mediation will continue with that mediator or with a new mediator appointed by the parties.

CO-OPERATION BY THE PARTIES

9. The parties must co-operate with the mediator and each other during the mediation.

CONDUCT OF THE PRELIMINARY CONFERENCE

10. As part of the mediation the mediator will schedule a preliminary conference at a time and venue convenient to the parties to establish a timetable for the mediation.
11. The mediator, the parties and their representatives who are to attend the mediation session must attend the preliminary conference.

AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION SESSION

12. The parties must attend the mediation with authority to settle within any range that can reasonably be anticipated.
13. At the mediation each party may have one or more other persons, including legally qualified persons, to assist and advise them.

COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES

14. Any information disclosed to a mediator in private is to be treated as confidential by the mediator unless the party making the disclosure states otherwise.

CONFIDENTIALITY OF THE MEDIATION

15. The parties and the mediator will not disclose to anyone not involved in the mediation any information or document given to them during the mediation unless required by law to make such a disclosure.
16. The parties and the mediator agree that subject to Clauses 20 and 21, the following will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings in respect of the Dispute:
 - 16.1 Any settlement proposal whether made by a party or the mediator.
 - 16.2 The willingness of a party to consider any such proposal.
 - 16.3 Any statement made by a party or the mediator during the mediation.
 - 16.4 Any information prepared for the mediation.

TERMINATION OF THE MEDIATION

17. A party may terminate the mediation at any time after consulting with the mediator.
18. The mediator may terminate the mediator's involvement in the mediation if, after consultation with the parties, the mediator feels unable to assist the parties to achieve resolution of the Dispute.

SETTLEMENT OF THE DISPUTE

19. If settlement is reached at the mediation, the terms of the settlement must be written down and signed by the parties before they leave the mediation.

ENFORCEMENT OF THE SETTLEMENT AGREEMENT

20. Any party may enforce the terms of the settlement agreement by judicial proceedings.
21. For the purposes of Clause 20, any party may call evidence of the settlement agreement including evidence from the mediator and any other person engaged in the mediation.

EXCLUSION OF LIABILITY AND INDEMNITY

22. The mediator will not be liable to a party for any act or omission in the performance of the mediator's obligations under this agreement unless the act or omission is fraudulent.
23. 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.

THE COST OF THE MEDIATION

24. The parties together and separately will be liable to the mediator for the mediator's fees described in Schedule 2. The parties will share equally all the other costs of the mediation described in Schedule 2.
25. If the mediation does not result in an agreement to resolve the dispute, the costs of the mediation will be costs in the cause, i.e. costs of the mediation (including those of the legal representatives to attend the mediation) will be treated as part of the overall costs in subsequent court proceedings which are generally payable by the losing party.

SCHEDULE 1: DESCRIPTION OF THE DISPUTE

The dispute is the subject of proceedings No: _____ of _____
in the _____ Court.

(Insert brief description of the dispute)

SCHEDULE 2: COSTS OF THE MEDIATION

1. Mediator's Fees and Expenses:

For the preliminary conference, all preparation
time and the first 3 hours of the mediation
session:

\$ 495.00 per party

Additional time:

Up to \$ 137.50 an hour per party

Deposit payable before the commencement of
mediation

\$ 990.00

These fees include GST (one-eleventh of fee)

2. The Law Society's Administration Fee

Not applicable

3. Room Hire

Not applicable if held at Macquarie Law

SIGNING OF THE AGREEMENT TO MEDIATE

The parties and the mediator have signed this agreement to mediate as follows:

Date: _____ / _____ / 20____

(Name of Party or Representative. Please Print)

(Signature)

(Name of Party or Representative. Please Print)

(Signature)

(Name of Party or Representative. Please Print)

(Signature)

(Name of Party or Representative. Please Print)

(Signature)

DANIEL PATRICK O'KEEFE
(Name of Mediator. Please Print)

(Signature)

(Name of Mediator. Please Print)

(Signature)

CONFIDENTIALITY AGREEMENT

Name of independent person present at the mediation.

Name of independent person. Please print.

I UNDERTAKE to the parties to the mediation that, in exchange for being permitted by them to be present at the mediation:

1. I will not disclose to anyone any information received by me during the mediation, unless required by law to make such a disclosure.
2. I will not disclose to anyone involved in the mediation any information received by me during the mediation from a party to the mediation unless expressly authorised by the disclosing party to do so.

(Signature of Independent Person)

____ / ____ / 20 ____
(Date)

(Signature of Independent Person)

____ / ____ / 20 ____
(Date)