

# ANDREW HAZELTON

BARRISTER

## AGREEMENT TO MEDIATE

### PARTIES

[ ]

### AND

[ ]

(together referred to as 'the parties')

### AND

Andrew Hazelton (the "mediator")

### BACKGROUND

- A. The parties are in dispute.
- B. The parties have requested the mediator to assist in resolving the dispute.
- C. This agreement sets out the terms of the mediation.

### AGREEMENT

#### Appointment of mediator

1. The parties appoint the mediator and the mediator accepts the appointment.

#### Role of the mediator and parties

2. The mediator is independent and impartial. The mediator will assist the parties to negotiate and if possible resolve the dispute by agreement.
3. The mediator will not provide legal advice or any decision for any party.
4. The mediator cannot impose an outcome on the parties and it is for the parties to resolve the dispute themselves.
5. The parties will attend the mediation in good faith and shall attempt to resolve the dispute and agree to cooperate with the mediator.

#### Legal Representation

6. The parties will be legally represented and those attending the mediation shall have full authority to settle the dispute.

#### Communications before mediation.

7. Any communications between the mediator and the parties before the mediation and any documents provided by the parties shall be covered by this mediation agreement.

**Conduct at the Mediation**

8. The mediation and any preliminary steps, shall be conducted by the mediator as the mediator considers appropriate, having regard to input from the parties. All parties who are to attend the mediation shall be advised in advance to the mediator and the other party.
9. The mediator may communicate with the parties or other persons present at the mediation, together or individually, at any time during the mediation.
10. All communications between a party or their representative and the mediator in private shall be kept confidential by the mediator unless authorisation to disclose is given by the party or their representative.

**Confidentiality and privilege**

11. All communications in connection with the mediation and all material prepared for the mediation shall be confidential and privileged to the extent permitted by law.
12. The mediator will not disclose any information obtained in connection with the mediation to any other party unless required by law to do so.
13. All people attending the mediation who are not parties shall sign a confidentiality agreement in the form annexed.
14. The mediator shall not be called as a witness in any proceeding including adjudication under the Construction Contracts Act.

**Termination**

15. A party may terminate the mediation at any time and without reason.
16. The mediator may terminate the mediation if it is clear that the resolution of the dispute cannot be achieved.
17. The mediation will terminate if a settlement is not achieved on the day of the mediation and the mediator does not agree to extend the period of the mediation.

**Settlement agreement**

18. If the parties resolve the dispute the terms of the settlement must be recorded in writing and signed by or on behalf of the parties prior to the end of the mediation.
19. Any party may enforce the terms of the settlement agreement by judicial proceeding and may produce the settlement agreement for that purpose.

**Indemnity and exclusion of liability**

20. The parties jointly and severally release, discharge and indemnify the mediator in respect of all liability of any kind (whether negligent or not) which may be alleged to arise in connection with or to result from or to relate in any way to the mediation.

**Costs**

21. The parties jointly and severally agree to pay the mediator a fee to be advised to the parties prior to the appointment of the adjudicator plus GST per day of mediation plus disbursements. If the mediation continues beyond 10pm on the day of mediation the fee will increase by an hour rate to be advised to the parties prior to the mediator's appointment plus GST per hour. This fee includes all preparatory work by the mediator and preliminary communications with the parties. It does not include any disbursements such as travelling, accommodation expenses or venue hire.
22. The parties agree between themselves to contribute equally to the mediator's fee and disbursements.
23. The mediator's fee and disbursements shall be paid within 14 days of the of the day of the mediation. Any outstanding fees and expenses shall attract interest at the rate of 10% per annum.
24. If the mediation is cancelled within 5 working days of the mediation then 30% of the mediator's fee plus GST shall be payable by the parties on the same terms as set out paragraphs 21 to 23 regardless of which party might be considered responsible for cancellation.

**Governing law and jurisdiction**

25. The law of New Zealand shall apply and New Zealand Courts shall have exclusive jurisdiction.

**Execution**

**ANDREW HAZELTON**  
BARRISTER

26. This agreement shall be binding when its terms have been accepted by all parties which may be by email prior to the mediation.

**Signed** on behalf of

**Signed** on behalf of

by:

by:

**Name** (please print):

**Name** (please print):

**Date:**

**Date:**

**Signed** by the **mediator**:

**Andrew Hazelton**  
**Date**

**CONFIDENTIALITY UNDERTAKING**

(To be signed by anyone participating in the mediation who is not a party to the mediation agreement.)

**Name of third party present at mediation** (please print):

27. I undertake to each of the parties to a mediation between [ ] and [ ] that as part of my obligations to the parties in attending the mediation that I will not:
- a. disclose to anyone not involved in the mediation any information or document received by me during the mediation (unless I am required by law to make such disclosure); or
  - b. make use of the information or document for any purpose other than the mediation.
  - c. The parties have read this confidentiality agreement and agree that I may disclose such information or documents or the general content of the mediation to other persons within my organisation and who have a legitimate interest in understanding the mediation on behalf the party who requested my attendance at the mediation (including the advisers and insurers of that party) if such disclosure is on the basis that confidentiality is maintained.

**Signed:**