

*[Based on the LEADR NZ standard agreement to mediate]*

**MEDIATION AGREEMENT** dated **2008** between:

1.

2.

3.

and

**GEOFF SHARP** (the mediator).

#### **APPOINTMENT OF THE MEDIATOR**

1. The parties appoint the mediator to assist them to resolve the dispute that is briefly described in Item 1 in the schedule to this agreement (**the Dispute**).
2. The mediator accepts the appointment to mediate the Dispute at the time and place set out in Item 2 of the schedule or at another time or place that the parties agree to.

#### **ROLE OF THE MEDIATOR AND OF THE PARTIES**

3. The mediator and each party will use their best endeavours to resolve the Dispute by:
  - 3.1 systematically identifying the issues in dispute;
  - 3.2 developing alternatives and options for the resolution of the Dispute;
  - 3.3 exploring the usefulness of each alternative; and
  - 3.4 seeking to achieve a resolution which is acceptable to the parties and which meets their interests and needs.
4. The mediator will be neutral and impartial.
5. The mediator will not:
  - 5.1 give legal or other professional advice to any party;
  - 5.2 impose an outcome on any party; or
  - 5.3 make any decision for any of the parties.
6. The mediator can meet with the parties jointly and/or separately, as the mediator determines.

**CONFLICT OF INTEREST**

7. The mediator must, before the commencement of the mediation, disclose to the parties, to the best of the mediator's knowledge, any prior association with any of the parties as well as disclose 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 inform the parties of those circumstances and the parties may agree that the mediator may continue to mediate.

**CO-OPERATION OF THE PARTIES**

9. Each party agrees to take part in the mediation in good faith.
10. Each party will comply with the reasonable requests and directions of the mediator in relation to the conduct of the mediation.

**PRE-MEDIATION MEETING**

11. As part of the mediation, the mediator may conduct a pre-mediation meeting in order to establish a timetable and procedure for the conduct of the mediation.
12. Unless the parties and the mediator agree otherwise, the parties and their representatives who are to attend the mediation are expected to attend the pre-mediation meeting.

**AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION**

13. Each party must have in attendance at the mediation a person or persons who will have the ultimate authority to settle the Dispute. If that is not reasonably practical, the mediator and other parties are to be notified prior to the mediation and each party must then have in attendance at the mediation a person with sufficient authority to recommend to the ultimate decision maker whether or not and in what manner to settle the Dispute, and whose recommendation is likely to be accepted.
14. Each party can, with the consent of the mediator, attend the mediation with one or more persons to assist or advise the parties.

**CONFIDENTIALITY OF THE MEDIATION PROCESS**

15. Any information disclosed during the mediation process by a party or that party's representative in private will be treated by the mediator as confidential, unless the party making the disclosure states otherwise.
16. The parties and the mediator will not disclose to any person not present at the mediation any information or document given to them during the mediation, unless required by law to

make such disclosure, or unless permitted or required to do so under Clause 17 or Clause 21.

17. A party may disclose information or documents obtained during the mediation to a person not present at the mediation where that party needs to do so in order to obtain professional advice or where the person is within that party's legitimate field of intimacy. A party disclosing information or documents in these circumstances must inform the professional advisor or any such person that the information or documents are confidential.
18. The parties and the mediator agree that, subject to Clause 21, the following will be privileged and will not be disclosed, tendered as evidence, or be the subject of a subpoena to give evidence or produce documents, in any proceedings relating to the Dispute:
  - 18.1 Any settlement proposal, whether made by a party, person at the mediation or by the mediator.
  - 18.2 The willingness of a party to consider such a proposal.
  - 18.3 Any statement made by a party, person attending or the mediator during the mediation.
  - 18.4 Any information or document prepared for or provided during the mediation process.
19. If a party produces a document at the mediation that otherwise would be privileged from production or from admission into evidence, that party does not waive that privilege by producing the document.

#### **RECORDING OF SETTLEMENTS**

20. If the parties agree to resolve the Dispute, a note of the essential terms of the settlement must be signed by or on behalf of the parties, before they leave the mediation.

#### **ENFORCEMENT OF SETTLEMENT AGREEMENTS**

21. A party seeking to enforce a settlement agreement made at the mediation may call evidence of entry into the agreement, including evidence from the mediator and from any other person present at the mediation.

#### **INDEMNITY AND EXCLUSION OF LIABILITY**

22. The parties agree that the mediator will not be liable to any party for any act or omission in the performance of the mediator's duties and 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 duties under this agreement, unless the act or omission is fraudulent.

#### **THE COST OF THE MEDIATION**

- 24. The parties will pay the Mediator's fees set out in his terms of engagement found at <http://www.geoffsharp.co.nz/>
- 25. Unless the parties agree otherwise they will share equally all the fees and costs of the mediation. These costs are to be paid within seven days of the mediation however the mediator may request estimated fees to be paid prior to the mediation. Any outstanding fees and costs attract interest at the rate of 2% per month or part thereof.

**TERMINATION OF THE MEDIATION**

- 26. A party may terminate its involvement in the mediation at any time but only after consultation with the mediator.
- 27. 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.

**SCHEDULE**

<b>ITEM 1</b>
The Dispute:

<b>ITEM 2</b>	
Date of mediation:	
Place of mediation:	
Commencement time of mediation:	

**SIGNED** by

**SIGNED** on behalf of

**SIGNED** by the mediator     )  
**GEOFFREY JOHN**             )  
**HATTON SHARP**             )

**CONFIDENTIALITY AGREEMENT TO BE SIGNED BY ANY NON PARTIES ATTENDING THE MEDIATION (INCLUDING COUNSEL)**

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

This agreement 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, including the advisers and insurers of that party provided always that any such disclosures and discussions will only be on this same basis of confidentiality.

**DATED**

\_\_\_\_\_  
NAME SIGNATURE

\_\_\_\_\_  
NAME SIGNATURE

\_\_\_\_\_  
NAME SIGNATURE

\_\_\_\_\_  
NAME SIGNATURE