

MEDIATION AGREEMENT

A dispute, briefly described in the schedule, has arisen between the persons there named as the disputants, who have requested Strategic Action Pty Limited ACN 003 566 210 of 2 Crown Street, Woolloomooloo, New South Wales 2011, Australia, carrying on business as **STRATEGIC RESOLUTION**, to help them resolve it. The person named in the schedule as the Mediator is an employee of Strategic Resolution accredited as a specialist mediator by the Specialist Accreditation Board of the Law Society of New South Wales. He is also accredited as a mediator under the Australian National Mediation Standard, available at <http://www.leadr.com.au/documents/Practice%20standards.pdf>.

1. APPOINTMENT OF STRATEGIC RESOLUTION AND ROLE OF MEDIATOR

- 1.1 The disputants appoint Strategic Resolution to help them resolve the dispute. Strategic Resolution agrees to make the Mediator available to them for that purpose. Impartially, the Mediator will assist the disputants to negotiate their own agreed solution and will not impose decisions on the disputants nor give legal or other advice.
- 1.2 If the dispute is the subject of pending court proceedings in a jurisdiction in which, without attendance at court, an order may be made by consent that the dispute or any part of it may be referred for mediation, the disputants will obtain, prior to the mediation, an order to the effect: "By consent, these proceedings be referred for mediation by [name of the Mediator]" and will serve a copy on the Mediator.

2. THE MEDIATION

- 2.1 The Mediator may communicate by any means with the disputants and may meet with the disputants together or with any disputant alone. The disputants agree to co-operate with the Mediator and each other disputant in the conduct of the mediation and to use their best endeavours to comply with reasonable requests made by the Mediator to promote the efficient resolution of the dispute.
- 2.2 Until the mediation is concluded by agreement or is otherwise terminated, the disputants will include the Mediator in all their communications to each other relating to the mediation, including electronic communications, unless the Mediator otherwise agrees.
- 2.3 A disputant may withdraw from the mediation immediately by giving written notice to each other disputant and the Mediator. If the Mediator believes the mediation is no longer productive or that any party is abusing the process or if the Mediator learns something in confidence that makes it impossible for the Mediator to continue to participate, the Mediator may withdraw from the mediation immediately by giving written or oral notice to the disputants, who must then appoint another mediator unless a disputant withdraws.

3. CONFIDENTIAL AND OTHER INFORMATION

- 3.1 The parties agree that unless compelled by law or otherwise agreed they will preserve total confidentiality in relation to proceedings within the mediation including all exchanges that may come to their knowledge concerning the dispute passing between any of the disputants or between a disputant and the Mediator, however communicated. This obligation does not apply to information that becomes public knowledge otherwise than by reason of a breach of this agreement.
- 3.2 Within the mediation, information disclosed privately to the Mediator shall be treated as confidential and may not be disclosed by the Mediator to another person without prior permission. Non-confidential information provided to the Mediator must be given immediately to each other disputant.

3.3 The Mediator shall be under no obligation to retain, following the mediation, documents, electronic records or notes made by or provided to the Mediator in the course of or for the purposes of the mediation.

4. **EFFECT OF MEDIATION**

4.1 The parties are in accord with the public policy of encouraging disputants to settle their differences rather than litigate. If the mediation resolves the dispute in whole or in part, the disputants must record their points of agreement in writing before concluding the mediation. If the mediation does not resolve the entire dispute, this agreement and the mediation will not affect the rights of any disputant in relation to issues that remain in dispute.

5. **CONFLICTS OF INTEREST**

5.1 Strategic Resolution or the Mediator, as the case may be, will immediately inform the disputants of any circumstance of which they become aware that might reasonably be considered to affect the Mediator's capacity to act impartially. The disputants will then confer and if agreed continue with the mediation before the Mediator.

6. **AUTHORITY, REPRESENTATION AND ASSISTANCE**

6.1 A disputant must participate in the mediation in person or by a representative with authority to make a binding agreement settling the dispute. Each disputant may appoint one or more other persons including legally qualified persons to assist and advise the disputant in the mediation as the disputant thinks fit.

7. **SUBSEQUENT PROCEEDINGS**

7.1 All parties acknowledge that information, electronic communications and documents brought into existence for and statements made in the mediation are privileged and are inadmissible in proceedings to determine issues in the dispute. In particular, client legal privilege shall not be waived by the disclosure in the mediation of an electronic communication or document to which that privilege attaches. Nevertheless, a disputant may prove objective facts by direct evidence in any proceedings, notwithstanding that knowledge of those facts was obtained through a privileged communication.

7.2 If part or all of the dispute is settled by mediation a disputant may enforce the terms of settlement by judicial proceedings and adduce evidence of the making of the settlement agreement including, to the extent that it may be necessary, from the Mediator and any other person participating in the mediation.

7.3 If at the conclusion of the mediation the disputants wish to consider appointing the Mediator to determine any unresolved issues as arbitrator or expert, the Mediator shall identify to each disputant from whom confidential information was received by the Mediator such of that disputant's confidential information as the Mediator considers relevant to the arbitration or expert determination. If the disputants wish to proceed with the appointment, then all disputants shall so appoint the Mediator in writing, expressly acknowledging that they have had the opportunity of obtaining legal advice before making the appointment and that they have no objection to the Mediator acting as arbitrator or expert and specifying any institutional rules under which any arbitration is to be conducted or the precise questions that are to be the subject of any expert determination. The Mediator may decline the appointment if he considers that he is unable impartially to determine any of the unresolved issues. If the Mediator accepts the appointment, before taking any steps in the proceeding he must disclose to all

disputants any confidential information obtained in the mediation that he considers relevant to the arbitration or expert determination.¹

7.4 Following the mediation and any arbitration or expert determination conducted by the Mediator, neither Strategic Resolution nor the Mediator will act as advocate in nor provide advice to a disputant in relation to any arbitral or judicial proceeding relating to the dispute. No disputant will do anything to cause the Mediator to breach this clause.

8. PAYMENT

8.1 The disputants must pay Strategic Resolution's fees for providing the Mediator at the rate of AUD 660.00 per hour plus GST plus any reasonable out-of-pocket expenses actually incurred. Each disputant must bear equally the fees and expenses.

8.2 If requested by Strategic Resolution or the Mediator, the disputants must lodge with Strategic Resolution from time to time reasonable amounts in advance to meet anticipated fees and expenses. At the conclusion of the mediation and of any arbitration or expert determination by the Mediator, Strategic Resolution will either invoice the disputants any shortfall or refund to them any excess.

9. EXCLUSION OF LIABILITY AND INDEMNITY

9.1 The disputants jointly and severally release, discharge and indemnify Strategic Resolution and the Mediator in respect of all liability of any kind whatsoever (whether involving negligence or not) which may be alleged to arise in connection with or to result from or to relate in any way to the mediation or to any arbitration or expert determination by the Mediator or to any subsequent act or failure to act pursuant to any settlement of the dispute.

9.2 The parties agree that no statements or comments, whether written or oral, made or used by the parties or their representatives or the Mediator within the mediation or within any arbitration or expert determination by the Mediator shall be relied upon to found or maintain any action for defamation, libel or slander or any related complaint

SCHEDULE

Brief description of the dispute: [eg. Court file reference number]

The disputants:

The Mediator:

Alan Lawrence Limbury
Strategic Resolution, 2, Crown Street,
Woolloomooloo, New South Wales 2011
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expert@strategic-resolution.com
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¹ See s27D of the *Commercial Arbitration Act, 2010* (NSW).

EXECUTED as an agreement.

For/by

.....
Signature
Date:

For/by

.....
Signature
Date:

For **STRATEGIC ACTION PTY LIMITED**

.....
Signature
Date:

By **ALAN LAWRENCE LIMBURY**

.....
Signature
Date:

CONFIDENTIALITY AGREEMENT
(for those in attendance who are not parties)

In consideration of my/our being permitted to attend this mediation, I/we agree to be bound by the confidentiality provisions of this agreement.

Name	Signature

Date:.....