

TERMS OF ENGAGEMENT AS MEDIATOR

1. These are the terms by which the parties engage Mark Kelly ("mediator") to mediate the dispute between them.
2. These terms of engagement are to be read in conjunction with the mediation agreement reached between the parties ("mediation agreement"). These terms of engagement and the mediation agreement are jointly and separately enforceable.
3. The role of the mediator will be as set out in the mediation agreement.
4. Prior to the commencement of the mediation, the mediator will disclose any material conflict of interest which he might have, that he is aware of, to the parties.
5. If, during the course of the mediation, the mediator becomes aware of any material conflict of interest which he might have, he will immediately inform the parties of this. The parties will then decide whether or not the mediation should continue.
6. Each party will co-operate with the mediator and each other, and use their best endeavours to resolve the dispute.
7. Excluding fraud, the parties 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 result from or relate in any way to the mediation (including, but not limited to, any associated teleconference or videoconference, and the hosting thereof by the mediator).
8. The parties jointly and severally agree to pay the mediator's fee. The mediator's fee in this instance will be \$7,250 plus GST for a full day mediation, including preliminary steps.
9. The mediator's fee will be paid within seven days after the conclusion of the mediation. Interest of 2% per month will be payable on any outstanding sum after that period.
10. The mediator's fee will be shared equally between the parties, unless otherwise agreed in writing.
11. If the parties have legal representation, the mediator relies on the legal representatives to ensure payment of his fee, and reserves the right to look to the legal representatives for payment in the usual way such as when counsel is instructed.

12. The mediator holds and will maintain professional indemnity insurance.
13. The mediator will keep a copy of such correspondence as relates to his appointment, the mediation agreement, and any settlement agreement he is provided with. He may not otherwise retain any materials relating to the mediation.
14. Parties will confirm agreement to these terms of engagement in the mediation agreement. Absent such confirmation, the parties are in any event deemed to have agreed to these terms by engaging the mediator.