

LEADR NEW ZEALAND INC.

MEDIATION AGREEMENT

LEADR New Zealand Inc.'s standard mediation agreement follows.

NOTE:

This agreement has been drafted to provide assistance to members in drafting their own mediation agreements. Users should rely on their own expertise and judgment in adopting any clauses from the standard agreement.

MEDIATION AGREEMENT

The Mediation Process

1. Mediation is a process in which an independent neutral assists the parties to a dispute to explore issues relating to and options for the resolution of the dispute.

Appointment of Mediator

2. A dispute has arisen between the parties (“the dispute”). Schedule 1 contains a brief description of the dispute.
3. The parties and the mediator agree that the mediator will mediate the dispute. This agreement governs the conduct of the mediation.

Role of Mediator

4. The mediator will be neutral and impartial. The mediator will assist the parties to explore options for the possible resolution of the dispute by helping the parties to:
 - isolate the issues in dispute;
 - identify the interests of each party;
 - develop options for the resolution of the issues;
 - explore to what extent each option meets the interests of each party.
5. The mediator will not:
 - make decisions for any party;
 - impose a solution on the parties;
 - give professional advice of any kind whatsoever (including legal advice) to any party;
 - accept any appointment in relation to any proceedings concerning the dispute.

Legal Representation

6. Each party may be legally represented at the mediation.

Conflicts of Interest

7. Prior to the commencement of the mediation, the mediator shall disclose to the parties to the best of his/her knowledge any prior dealings with any of the parties and/or any interest in the dispute.
8. If the mediator becomes aware of any facts that may reasonably be considered to affect his/her capacity to act impartially, during the course of the mediation, he/she will immediately inform the parties of such circumstances. The parties will then decide whether or not the mediation should continue.

Commitment to Process

9. Each party shall co-operate with the mediator and each other and use their best endeavours to resolve the dispute.

Preliminary Conference

10. Prior to the mediation the parties or their legal representatives will at a preliminary conference (which may be held by telephone) agree between themselves and with the mediator:

- the time and venue for the mediation;
- the exchange and/or presentation of any documents including:
- brief written outlines of the issues;
- confidential statements to the mediator including, if desired, suggested settlement proposals;
- who will be present at the mediation including each party or representative, legal or other representatives;
- any other necessary matters.

Authority to Settle

11. Each party or their representative/s at the mediation will have full authority to settle the dispute.¹

Communication During the Mediation

12. The mediator may communicate regarding the dispute with any of the parties or other persons present at the mediation, at any time during the mediation, provided such communications are kept confidential unless authorisation to disclose is given.

13. The mediation shall be without prejudice.

14. The mediation shall be entirely confidential. There will be no disclosure outside the mediation of any information or documentation disclosed during the mediation, including the preliminary steps, by any party or the mediator, except for the purpose of obtaining legal advice, unless that party or the mediator is required to do so by order of a court or by law.ⁱⁱ
15. The following are privileged and will not be relied on or introduced as evidence in any judicial, arbitration or tribunal proceeding:
- any settlement proposal made by a party or the mediator;
 - any view expressed on a settlement proposal by a party or the mediator;
 - any admissions made;
 - any exchanges (oral or documentary) made by a party or the mediator;
 - any information or documents whatsoever prepared for the mediation including notes made within the mediation by any part or the mediator.
16. The parties will not subpoena the mediator as a witness in any court, tribunal or arbitration proceeding.
17. Non-parties present at any time during the mediation will sign an appropriate confidentiality agreement in the form attached.ⁱⁱⁱ

Termination

18. A party may terminate the mediation at any time after consultation with the mediator.
19. The mediator may terminate his/her involvement in the mediation if after consultation with the parties the mediator considers she/he is unable to achieve a resolution of the dispute.

Settlement of the Dispute

20. If the dispute is resolved by the parties in mediation the agreed terms will be recorded in writing and signed by all parties before they leave the mediation (“the agreement”).

Enforcement

21. The parties will give effect to and implement the agreement.
22. Any party may enforce the terms of the agreement by judicial proceeding. For the purpose of such proceedings, evidence may be called of the agreement.

Exclusion of Liability and Indemnity

23. Excluding fraud, 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 result from or relate in any way to the mediation.

Defamation

24. The parties and the mediator agree that no statements or comments, whether written or oral, made or used by them or their representatives during the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded in bar to any such action.

Costs

25. The parties jointly and severally agree to pay the mediator a mediation fee. The mediation fee will be [per hour] (plus G.S.T.) for all attendances involved in the mediation, including preliminary conferences, together with any travelling and accommodation expenses (if any) and other miscellaneous expenses, e.g. room hire.

26. The fee shall be paid within 21 days after the conclusion of the mediation.

27. The mediation fee shall be shared equally between the parties.^{iv}

28. Each party otherwise shall pay its own costs and expenses of the mediation.

.....
Signature

.....
Signature

.....
Date

.....
Date

.....
Name (please print)

.....
Name (please print)

.....
Mediator

Note:

An additional type of clause which mediators may wish to include is a clause dealing with the consequence of a breach of clause 16 of the standard agreement.

For example:

In the event that clause 16 above is breached, the party in breach will indemnify the mediator for all expenses incurred by the mediator related to the subpoena.

ⁱ Note this clause will often require adaptation to fit the particular circumstances. Mediators would be wise to seek specific clarification on the question of authority at the preliminary conference. For example in certain circumstances mediators may wish to amend 11 by adding “within any range that could reasonably be anticipated”.

ⁱⁱ Note mediators acting in the family/child welfare area may wish to amend this clause to provide for specific exceptions to non-disclosure covering circumstances that may arise, for example if:

- there is reason to believe that either party is in danger of bodily harm; and/or
- non-disclosure would result in the mediator being a party or accomplice to an illegality or a crime; and/or
- the public interest (for example but not limited to serious risk to health, safety or a child’s welfare) justifies disclosure to a relevant enforcement or protective agency.

ⁱⁱⁱ Mediators may wish to consider whether all advisers/representatives present at mediation, including legal advisers, ought to sign the confidentiality agreement.

^{iv} This clause may need amendment in appropriate cases for example where one party has agreed to pay the mediator’s fee in full.

Name of Third Party present at mediation

(Name of Third Party. Please print.)

I UNDERTAKE to the parties to a mediation between

..... and

that, in return for being permitted by them to be present at the mediation, I will not disclose to anyone any information or document received by me during the mediation, unless **I am** required by law to make such disclosure, or to make use of the information or document for any purpose other than the mediation.

(Signature of Third Party)

(Date)