

This **AGREEMENT** is made the _____ day of _____ 2009

BETWEEN :

(“the Claimant”)

AND:

(“the Respondent”)

AND:

(“the Expert”)

RECITALS:

The Claimant and the Respondent (collectively “the parties”) are presently in dispute over matters arising out of or in connection with _____ (“the Dispute”).

The Dispute has been referred by the parties to expert determination by the Expert.

The Expert has agreed to determine the Dispute on the terms set in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

APPOINTMENT

The parties hereby engage the Expert, and the Expert accepts the engagement, to act as an expert in determination of the Dispute.

The parties agree to participate in good faith in the Process.

The parties agree that the determination of the dispute by the expert shall be final and binding upon them.

THE PROCESS

Within [[]] days after the provision of the above submission, the Respondent shall provide to the Expert and to the Claimant a written response to the Claimant's submission.

Within [[]] days after the provision of the Respondent's response, the Claimant may provide a written response to the Expert and to the Respondent.

The Expert may require further written submissions or documents from either or both parties, giving each party a reasonable opportunity to make a written response to the other's submission, and/or call a conference between the parties and the Expert.

If the Expert decides that a conference between the parties is necessary, the Expert shall arrange for a conference at a venue and time convenient for the parties and shall notify them accordingly. A conference may take the form of a view.

At least [[]] days prior to the conference the Expert shall inform the parties in writing of any specific matters he wishes to be addressed at the conference.

At the time and place notified for the conference the parties or their representatives shall appear before the Expert and may make oral representations.

At the conference the Expert may permit the making of such submissions as may be fair and expedient in the circumstances.

DETERMINATION

As expeditiously as possible after the receipt of the submissions or after a conference, the Expert shall determine the dispute between the parties and notify such determination in writing to the parties. The Expert shall give to the parties a brief statement of the reasons for the determination.

Where the determination made by the Expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures or a material mistake in the description of any person, thing or matter, a defect of form, the Expert may correct the determination.

COSTS OF THE DETERMINATION

Unless the parties agree otherwise, each party shall bear its own costs and shall share equally the costs of the Expert and the Process.

RELEASE AND INDEMNITY OF THE EXPERT

Except in the case of fraud, the Expert shall not be liable to any of the parties in relation to any cause of action for anything performed or omitted by the Expert. The parties jointly or individually hereby release and indemnify the Expert against all legal actions, suits, proceedings, disputes, accounts, claims, demands, costs, expenses and damages of any kind, arising out of or in connection with the Process or any other process connected to this Agreement.

EXPERT'S FEES

The parties shall pay for all the time taken by the Expert in the preparation for, the performance of, and in connection with, the Process and any other process arising out of or in connection with this Agreement. The Expert's fees shall be calculated at the rates set out in Schedule A, including the Expert's reasonable fees and expenses.

The parties shall be jointly and severally liable to the Expert and to the security holder for their respective fees and reasonable expenses.

Upon completion, termination or abandonment of the Process, and the Expert shall instruct the security holder to:

pay the Expert's fees and expenses from the security;

notify the parties of any balance of security then held, if the Expert is continuing to perform the work under the Agreement; or

relay to the parties any balance of security held, if the Expert's work has been completed.

To the extent that the Expert's invoices are not furnished by security, the parties shall pay the Expert's fees and expenses within 30 days of the date of the Expert's invoice.

SECURITY FOR THE EXPERT'S FEES

On or before [[]], each party shall lodge with the Institute of Arbitrators and Mediators Australia ("the security holder") the sum of \$[[]] ("the security") as security for the Expert's fees and expenses.

The parties shall be jointly or individually responsible to the security holder for its administrative fees in relation to the security.

Each party shall lodge with the security holder additional security as instructed by the Expert at any time in the amount and within the time stipulated.

The Expert shall refrain from continuing the Expert Determination or any other process under or in connection with the Agreement until the parties comply with their obligations with respect to security.

Each of the parties authorises the security holder to :

make payment of the Expert's fees and expenses from security on the Expert's instructions;

deduct, from the security, the security holder's administrative fees and expenses in accordance with specific provisions in this Agreement.

.....
Signed for and behalf of the Claimant

.....
Signed for and behalf of the Respondent

.....
Signed by the Expert

**SCHEDULE A
SCHEDULE OF FEES**

The Expert's Fees shall be calculated at the following rates:

per day of sitting	\$	plus GST	
per hour	\$	per hour (maximum \$ plus GST	per day)
travelling/accommodation expenses		reimbursement of costs incurred	
secretarial services, sundries		nil	
photocopying, fax		nil, unless substantial, then to be prior agreed	
security holder's fees		reimbursement of costs incurred	

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