

MEDIATION AGREEMENT

(Mediator's name) has been appointed to mediate in the dispute between *(applicant's name)* and *(other party's name)*. The terms and conditions of the mediation are as follows:

1. The parties (or their representatives) will participate in a pre-mediation conference if required by the Mediator. The purpose of this meeting is to discuss the process of mediation and the requirements of both parties at the mediation. The presentation of documentation and other administrative arrangements will also be discussed.
2. The Mediator and the parties (including others who are brought to mediation by the parties) shall each sign and observe the **Confidentiality Agreement** attached. Pursuant to Section 66 of the *Retail and Commercial Leases Act 1995* evidence of admissions or statements made in the course of the mediation of a dispute is not admissible as evidence before a court. Such admissions and statements include the following:
 - (a) verbal or documentary exchanges between any of the parties and the Mediator or between any two or more of the parties within the mediation;
 - (b) any views expressed or suggestions or proposals made by the Mediator or by any party regarding possible settlement of the dispute;
 - (c) admissions made within the mediation by any party;
 - (d) documents brought into existence for the purpose of mediation.
3. The making of this Agreement and its terms shall not be disclosed except for the purpose of asserting or enforcing any right or liability arising from the terms of the agreement.
4. The parties are not bound by any comments, opinions, suggestions, statements or recommendations put forward by the Mediator.
5. The Mediator is at liberty to discuss the dispute privately with any of the parties or their legal advisers at any time during mediation. The Mediator must not disclose the content of any such private discussions, implicitly or expressly, unless specifically authorised to do so.
6. No statements made by any person during the mediation shall be used in any action for defamation, libel, slander or a related complaint.
7. The parties jointly and severally release, discharge and indemnify the Mediator in respect of all liability of any kind whatsoever in respect of the mediation.

REPRESENTATION AT MEDIATION

1. Legal Advisers

Legal advisers present at a mediation with their clients will take such part in the proceedings as their clients wish. It should be borne in mind at all times that a mediation is an informal meeting between the parties themselves in a non-legal context. It is essentially directed to the parties being able to engage in a free, and totally protected, person to person exchange of views about the dispute and ways in which it might be able to be settled.

Legal advisers are not present as advocates or for the purpose of participating in an adversarial courtroom-style contest with each other, still less with the opposing party.

A legal adviser who does not understand and observe this is a direct impediment to the mediation process.

The role of legal advisers is essentially threefold -

- (i) to advise and assist their clients in the course of the mediation
- (ii) to discuss with the Mediator, with each other and with their respective clients such legal, evidentiary or practical matters as the Mediator might suggest or their clients might wish.
- (iii) to prepare the terms of settlement or heads of agreement recording the agreement reached at the end of the mediation for signature by the parties prior to departure at the end of the mediation.

2. Parties

- (a) **It is essential that each party be present in person or have present at the mediation a representative with full authority to negotiate and settle the dispute.**
- (b) **At the heart of the mediation process is the opportunity for each party to make a dispassionate and fundamental objective reappraisal of the whole situation in the free and totally protected discussions that take place within the mediation. A constraint or a predetermined limit on the authority of a representative denies that party the full benefit of on-the-spot informed reappraisal and inhibits the prospect of a successful outcome.**
- (c) There can, of course, be cases where unquestionable full authority cannot be present (eg an overseas Lessor). It should, however, be possible for the representative attending the mediation to give a confident and responsible assurance of expectation that a recommendation will be accepted.

- (d) The few mediations that fail to succeed more often than not are mediations in which one or more of the parties has viewed the procedure as simply involving settlement discussions or pre-trial conferences such as some court systems require and has sent along a representative with limited authority in the contemplation of seeing whether the other party can be talked down (or up) to not more (or less) than some arbitrarily predetermined figure. Such an approach inhibits the potential value of the mediation. **If the representative feels the need, or is required, to consult before concluding a settlement agreement, then the person or persons to be consulted should be present at the mediation throughout so that they, too, can take part in the discussions and appraisal.**

3. **Mediation Rules**

The mediation rules should be read in conjunction with this agreement.

