

Agreement to Mediate

Engagement of Mediator

1. The parties agree to engage Three60 Consult to mediate their dispute in accordance with the terms of engagement. This agreement governs the conduct of the mediation.

Role of the Mediator

2. 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:
 - (a) Isolate the issues in dispute;
 - (b) Identify the interests of each party;
 - (c) Develop options for the resolution of the issues; and
 - (d) Explore to what extent each option meets the interests of each party.
3. The mediator will not:
 - (a) Make decisions for any party;
 - (b) Impose a solution on the parties.

Representation

4. Each party may be represented at the mediation or have a support person.

Conflicts of Interest

5. Prior to the commencement of the mediation, the mediator will 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.
6. 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 this. The parties will then decide whether or not the mediation should continue.

Commitment to Mediate

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

Communications during the Mediation

8. The mediator may communicate privately 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).
9. The mediation shall be without prejudice.

10. 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 the disclosing party or the mediator is required to do so by order of a Court or by law, or unless all the parties expressly agree to such a disclosure in writing.
11. The following are privileged and will not be relied on or introduced as evidence in any Court arbitral, tribunal or any other proceeding;
 - (a) Any settlement proposal made by a party or the mediator;
 - (b) Any view expressed on a settlement proposal by a party or by the mediator;
 - (c) Any admissions made;
 - (d) Any exchanges (oral or documentary) made by a party or the mediator; and
 - (e) Any information or documents whatsoever prepared for the mediation including notes made within the mediation by any party or the mediator.
12. The parties will not subpoena the mediator as a witness in any Court, arbitral, tribunal or any other proceeding.

Termination

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

Settlement of the Dispute

15. If an agreement is reached, the terms of that agreement may be recorded in writing and signed by the parties.

Exclusions of Liability and Indemnity

16. 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 as a result from, or relate in any way to the mediation.

Defamation

17. 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 the bar to any such action.