**Mediation Agreement**

**Franchising Code**

**Nos. F-XXXX**

This Agreement is made between:

PARTY 1

ACN000 000 000

and

PARTY 2

ACN000 000 000

(the Parties)

and

Mediator

(the Mediator)

**Preliminary**

1. This mediation is conducted as part of the dispute resolution process mandated by the Franchising Code of Conduct (‘**Code’**) being Schedule 1 of the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*, a prescribed and mandatory industry code made under section 51AE of the *Competition and Consumer Act 2010.*
2. The parties to this mediation agreement accept that they are parties to a franchise agreement governed by the Code for the purpose of the mediation.
3. A Party who has a dispute has notified the other Party of the dispute (‘**Dispute’**) by giving them a notice of dispute, as required by the Code. The notice of dispute is annexed as **Schedule 1**.
4. The person identified as the Mediator has been appointed to assist with the resolution of the Dispute by the Dispute Resolution Adviser (‘**Adviser’**) under the Code.
5. By this mediation agreement (‘**Agreement’**), the Parties jointly appoint the Mediator to assist resolve the Dispute between them consistent with the Code and the terms of this agreement and the Mediator accepts the appointment.

**Mediator – Functions and Power**

1. The Mediator shall determine the manner in which the Mediation, including all preliminary steps, shall be conducted having due regard to the nature and circumstances of the Dispute and the parties involved.
2. The Mediator shall arrange for the efficient and expeditious resolution of the Dispute by giving directions as to the times, dates, places and methods for holding the mediation and any preliminary conferences or processes required.
3. The Mediator may meet or communicate with any of the parties or their advisers, together or separately, as frequently as the Mediator considers appropriate.
4. The Mediator shall not give legal advice and a Party will not be bound by any comments, suggestions, advice, opinions, statements or recommendations of the Mediator in relation to the Dispute.

**The Parties – Representation, Good Faith and Authority to Settle**

1. Each Party must attend the mediation and participate in good faith with the Mediator and each other Party in the conduct of the Mediation. Each Party shall comply with the reasonable requests and directions of the Mediator in support of the resolution of the dispute.
2. Each Party shall attend or be represented before the Mediator by persons with full knowledge of the matters in dispute and authority to settle the Dispute. The parties agree to inform the Mediator immediately should they not have authority to settle the Dispute within any range or in a manner that can reasonably be anticipated.
3. Each Party may attend the mediation in person, by telephone, video conference or other electronic means but only by prior agreement with the Mediator, unless the Mediator believes that the resolution of the dispute would be assisted by the Party attending the mediation in person.

**Confidentiality of the Mediation Process**

1. Any information disclosed to the Mediator by a Party, in the absence of the other Party, shall be treated by the Mediator as confidential, unless the Party making the disclosure states otherwise or the Mediator is compelled by law or order of a Court to provide the information.
2. The Mediator will provide a confidential report of the mediation conducted to the Adviser in the format required. Any Party may make a confidential report on the mediation to the Adviser in a format determined by the Adviser.

**Protection of the Mediation Process**

1. The parties and the Mediator agree that:
   1. Any comment, suggestion, advice, opinion, statement, recommendation, information given or notes made by any Party its advisers or the Mediator;
   2. Any settlement proposal whether made by a Party or the Mediator;
   3. Any admission or concession made by a Party;
   4. Any document or information used for the mediation process;
   5. Any document that otherwise would be privileged from production or from admission into evidence in any arbitral or judicial proceedings;

Made in preparation for, or in the course of the mediation:

* 1. Will be privileged and will not be disclosed in, or relied upon or be the subject of a subpoena to give evidence or to produce documents, in any arbitral or judicial proceedings whether or not the proceedings relate to the Dispute;
  2. Shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be used to defend any such action.

1. Any person who is not a Party, a legal representative of a Party or an employee of a Party shall only attend the mediation with the approval of the Mediator and after completing the Confidentiality Agreement in **Schedule 2**.

**Settlement of the Dispute**

1. If a settlement of the Dispute is reached at the mediation, any Party may enforce the terms of any settlement agreement by arbitral or judicial proceedings.
2. Where it is required for the purpose of enforcement, any Party may call evidence of the settlement agreement including evidence from the Mediator and any other person engaged in the mediation.
3. The Party calling evidence of the settlement agreement agrees to indemnify the Mediator for any legal costs and other expenses incurred by the Mediator in giving evidence or in obtaining advice in relation thereto and shall pay in advance to calling for such evidence to the Mediator, the Mediator’s estimate of such costs and expenses.

**Termination of the Mediation**

1. If at least 30 days have elapsed after the date of the start of the mediation as advised under the Code and the Dispute has not been resolved, the Mediator:
   1. May terminate the mediation, unless the Mediator is satisfied that a resolution of the dispute is imminent;
   2. Must terminate the mediation upon the written request of a Party.

**Exclusion of Liability and Indemnity**

1. The Mediator and the Adviser shall not be liable to a Party for any statement, representation, act or omission in assisting the parties to resolve the Dispute.
2. The parties together and separately agree to hold blameless and indemnify the Mediator and the Adviser against any claim, action or liability for which they are individually responsible, unless the statement, representation, act or omission is fraudulent.

**Costs of the Mediation**

1. The costs of the mediation are set out in **Schedule 3** and include the Mediator’s fees, the cost of room hire and any other expenses such as travel and accommodation, catering and any additional input (including expert reports), if agreed by both parties to be necessary for the conduct of the mediation.
2. The parties are liable equally for the costs of the mediation unless they agree otherwise.
3. Each Party agrees that they are jointly and severally liable to pay for the costs of the mediation which are identified in the Mediator’s Tax Invoice.
4. Where the parties have paid a deposit in the amount of the anticipated costs of the mediation, the Mediator will not continue with the mediation when those funds are exhausted unless and until the parties have agreed to pay any further costs of the mediation as advised to them prior to the mediation continuing.
5. The parties shall pay their own costs to attend the mediation.

**Governing Law**

1. This agreement shall be legally binding and shall be governed by and construed under the laws of the State of New South Wales.
2. This agreement may be executed in any number of counterparts, each of which will be an original but such counterparts will together constitute one and the same instrument.

**Party 1**

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of: |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Party name |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Name** of authorised representative  *(please print)*  **Party 2** |  | **Signature**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |
| **Signed** for and on behalf of: |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Party name |
|  |  |  |
|  |  |  |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Name** of authorised representative |  | **Signature** |
| *(please print)* |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |

**Mediator**

|  |  |  |
| --- | --- | --- |
| **Signed** by: |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Mediator |
|  |  |  |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |

**SCHEDULE 1**

**Notice of Dispute**

as lodged with the

Office of the Franchising Mediation Adviser

(or as attached)

**SCHEDULE 2**

**Confidentiality Agreement**

*(To be signed by any person attending the mediation*

*other than the Mediator, a Party or a Party’s lawyer)*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*(Name of independent person. Please print)*

**I UNDERTAKE** to the parties to the mediation that, in exchange for being permitted by them to be present at the mediation:

1. I will not disclose to anyone any information received by me during the mediation, unless required by law to make such a disclosure.

2. I will not disclose to anyone involved in the mediation any information received by me during the mediation from a Party to the mediation unless expressly authorised by the disclosing Party to do so.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Signature of independent person) (Date)*

**SCHEDULE 3**

**Costs of the Mediation**

**Mediator’s Fees & Expenses**

|  |  |  |
| --- | --- | --- |
| 1 | For the administration of each of the referred file/s, including reading of the notice of dispute and any supporting documentation, contacting the parties and arranging the mediation venue and other facilities to support the dispute resolution process up to **3** hours, per file charged at an hourly rate of: | $330.00 per hour  inclusive of GST |
| 2 | For the conduct of the mediation, preliminary conference and any other process steps, as required.  At an hourly rate for any hour or part thereof: | $330.00 per hour  inclusive of GST |
| 3 | Room hire fees | At cost |
| 4 | Long distance calls, couriers, etc. (if applicable) | At cost |
| 5 | Accommodation, meals and travel expenses (if applicable) | At cost |
| 6 | Allocation of costs – equally between parties, unless otherwise agreed in writing with the Mediator  Party 1  Party 2 | 50%  50% |

**Payment of the Fees & Expenses**

The fee in Item 1 is payable even if the mediation does not occur or the dispute is settled or discontinued prior to the *start* of the mediation.

The parties to the mediation agreement are charged an *estimated* fee for Items 1 to 5 calculated on the basis of the OFMA approved rates specified above.

The amount of the estimated costs is required to be deposited to the Mediator’s nominated bank account *prior* to the commencement of the mediation process.

These costs are shared equally between the parties.

At the conclusion of the mediation each Party will be provided with a Tax Invoice in respect of the *actual* costs of the mediation. If any monies were paid in excess of the actual costs they will be refunded proportionally to each Party. Items 3 to 5 are invoiced net of GST charged by the supplier, plus GST.