

SODR (Solution-Oriented Dispute Resolution) Process Engagement Agreement

This Process Agreement is made between:

.....("Party")
.....("Party")

and **Dispute Solutions Pty Ltd** ABN 19 833 605578 ("Dispute Resolver")

On signing, this document evidences a legally binding contract between Dispute Solutions and the parties. It confers authority and jurisdiction on Dispute Solutions, and its nominated dispute resolvers, to: (a) manage a Facilitation process; (b) make a legally enforceable Determination to bind the parties and (c) , under contract law.

By signing below the parties confirm their voluntary agreement to this process, based on an informed understanding of the legal consequences of their commitments.

- 1. Fundamental Objectives.** To resolve the issues, disputes and conflicts ("issues") listed below, efficiently, effectively, fairly and with legally-enforceable finality.
- 2. The Parties.** Commit to participating in the Process, in good faith, to resolve their issues.
- 3. Issues for Resolution.** The Parties have differences, disputes and/or conflicts ("Issues") between them that they wish to resolve using a SODR process including, but not limited to, the following:

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| 1. | |
| 2. | |
| 3. | |
| 4. | |

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| 5. | |
| 6. | |

- 4. Other Issues.** The Parties acknowledge that other issues could arise during the Process that may be added to the Issues, at the Facilitator's discretion.
- 5. Engagement.** By signing below, the Parties engage and authorise Dispute Solutions, and its nominated dispute resolvers, to do what, they deem appropriate and necessary (within reason) to achieve a full, efficient and fair resolution of their problems, using this SODR process and,
- a) Dispute Solutions nominates **Jon Kenfield** to be the Facilitator, and the potential Determiner, for Phases (1) and (2) of the Process.
 - b) By signing below, the Parties confirm Jon Kenfield's appointment as their Facilitator, and Determiner, for Phases (1) and (2) of the Process.
 - c) The Parties understand that a different dispute resolver will be appointed to the role of Independent Decision Maker ("IDM"), if:
 - i. Phases (1) and (2) fail to produce agreed, or accepted final outcomes, and
 - ii. The Process moves on to Phase (3).
- 6. Process Style.** SODR is a flexible process that may be delivered face-to-face, or partially/wholly online, by phone, email and zoom, or similar electronic process.
- 7. Process Phases.** This SODR Process consists of 3 separate, sequential Phases:
- 7.1 Phase #1 - Facilitation.**
- 7.1.1** The Facilitator helps the Parties to discuss and agree their Issues and develop their own terms of resolution in a written Agreement (contract). The Facilitator's role is:
- i. Establish and manage an efficient process.
 - ii. Focus and guide discussions between the Parties.
 - iii. Provide opinions (not as legal, or as any other form of expert advice).
 - iv. Encourage problem-solving to help develop practical solutions.
- 7.1.2** The Facilitator has no power or authority to make decisions on anything other than process management issues.

- 7.1.3** This SODR Facilitation process complies, in most respects, with the Australian National Mediator Standards (“NMAS”). However, to enable the rapid, low cost and **final** resolution of disputes using this SODR Process, the Parties expressly acknowledge and agree that their Facilitator is only required to follow the procedures outlined in this Agreement.
- 7.1.4 Finality and Closure.** A signed and witnessed (voluntary) Agreement provides contractually-enforceable resolution and closure at the end of Phase #1.
- 7.1.5 Failure to Resolve.** If the Facilitator decides, or if all Parties agree that Phase #1 has failed, or is unlikely to reach an Agreement, the Process moves into Phase #2:
- 7.2. Phase #2 - Determination of Facts, Issues and Outcomes.**
- 7.2.1** In Phase #2, in accordance with the authority conferred by this contract, the Facilitator becomes a Determiner (decider) of facts, issues and outcomes.
- 7.2.2 Determination.** The Determiner produces a written Determination that responds to the list of Issues for Resolution. The Determination:
- i. Is legally-enforceable, as a contract, under the terms of this Agreement.
 - ii. Will be in writing, with copies provided to all Parties.
 - iii. Will include Directions to Parties to do, or to not do, anything, within reason, that is relevant to the Issues.
 - iv. Will include brief reasons for each Determined Issue and each Direction.
- 7.2.3 Determination Process.** The Determiner:
- i. Is not bound by the Rules of Evidence.
 - ii. May use any information obtained through the Process to date, including confidential information, to Determine the Issues.
 - iii. May request, or allow, additional submissions from the Parties.
 - iv. May obtain any further information they deem necessary.
- 7.2.3 Finality and Closure.** The Parties understand and agree that a Determination made in connection with this Agreement is legally enforceable as a contract between them.

7.2.4 Alternatively: If the Parties unanimously agree, in writing, to either: (a) reject the Binding Determination, or (b) request a binding decision from a different dispute resolver, the Process moves to Phase #3. This requires an additional process fee.

7.3 Phase #3 - Independent Decision on Facts, Issues and Consequences.

7.3.1 In Phase #3, an Independent Decision Maker ("IDM") is appointed to replace the original Facilitator/Determiner - to make binding Decisions on remaining Issues in dispute.

7.3.2 Decision. The IDM produces a written Decision that covers the Issues referred too them, and nothing else. The Decision:

- i. Is legally-enforceable, as a contract, under the terms of this Agreement.
- ii. Will be in writing, with copies provided to all Parties.
- iii. Will include Directions to Parties to do, or to not do, anything, within reason, that is relevant to the Issues.
- iv. Will include brief reasons for each Decided Issue and each Direction.

7.3.3 Decision Process. The IDM:

- v. Is not bound by the Rules of Evidence.
- vi. May use any information obtained through the Process to date, including confidential information, to Determine the Issues.
- vii. May request, or allow, additional submissions from the Parties.
- viii. May obtain any further information they deem necessary.

7.3.4 Finality and Closure. The Parties understand and agree that a Decision made in connection with this Agreement is legally enforceable as a contract between them.

8. Costs (+ GST). Costs are usually shared equally between the Parties however, they are free to agree to any alternative arrangement:

- (a) Parties agree to pay **\$ 1,000.00 (+ GST)**, for the standard SODR Process, covering Phases #1 and #2, on the following basis:

| Parties | % of Cost | \$ |
|----------------|------------------|-----------|
|----------------|------------------|-----------|

| | | | |
|----|--|--|--|
| 1. | | | |
| 2. | | | |

- (b) The full \$1,100.00 is payable, irrespective of the outcome of the process.
- (c) Any significant out of pocket expenses will be re-charged at cost. Any such costs must be pre-approved by all Parties, and paid in the same proportions as the Process fees, unless otherwise agreed by the Parties.
- (d) Meetings cancelled, postponed or missed, with less than 2 full business days' written notice to Dispute Solutions, may incur a cancellation fee of **\$200.00** (+ GST). Dispute Solutions may waive, or allocate this cost to any Party(s), at its sole discretion.
- (e) Parties can request an IDM for Phase #3, for an additional cost of \$1,000.00 (+GST).

9. Withdrawal. The Parties acknowledge and accept the following fundamental terms of this Process Contract:

- a) After signing this contract no Party may unilaterally withdraw from the Process, or otherwise avoid their obligations and undertakings under the contract, even if they stop participating in the Process.
- b) If any Party ceases to participate, the Facilitator becomes a Determiner.
- c) Remaining Parties may continue the Process in the absence of non-participating party(s) (*ex parte proceedings*). They are still required to adequately make out their case, and propose options for resolution, which will be taken into account in the drafting of a binding Determination.
- d) Under the terms of this contract, and to the maximum extent possible at law, a non-participant is deemed to agree to be morally and legally bound by the terms of any duly produced Determination.

10. Participation. The Parties confirm that they:

- a) Will participate in the Process openly, honestly, and in good faith.
- b) Genuinely intend to resolve all relevant issues, with finality.
- c) Have, or will during the Process disclose, and deal constructively with, all significant and relevant issues of concern.

- d) Will not raise any resolved issue for reconsideration, after the Process ends.
 - e) Have full authority to resolve any issues raised, that relate to them.
- 11. Representation and Assistance.** Parties may be assisted by lawyers, advisers, and other support people, within reason.
- 12. Confidentiality.** All proceedings, negotiations and materials produced for this Process are strictly confidential and are provided "without prejudice". They may not be used or relied upon for any other purpose whatsoever outside the Process, without the express written approval of all Parties, and the Facilitator.
- 13. Subsequent Proceedings.** Neither Dispute Solutions, nor any dispute resolver connected with the Process, may be called upon by anyone to provide any evidence or information about any Parties, proceedings, or content, unless formally required to do so by due legal process.
- 14. Immunity and Indemnity.** The Parties jointly and severally indemnify and hold harmless: Dispute Solutions Pty Ltd, including its affiliates, employees, contractors and subcontractors, from and against any and all losses, claims or damages raised against them, and for any extra expenses incurred, in anyway whatsoever, in connection with the Process.
- 15. Additional Costs.** If, despite clauses 13 and 14 of this Agreement, anybody connected to the process receives a subpoena or similar legal order from any source that, in their view, relates to this dispute, Dispute Solutions can require the relevant Party to deposit funds with them sufficient to:
- a) Pay all costs reasonably incurred by the company or its associates in relation to the order, including legal costs; and
 - b) Pay dispute resolvers \$300.00 (+ GST) for each hour of time required to deal with the order, plus any reasonable out of pocket expenses actually incurred.
- 16. Documented Outcomes.** The details of any Agreement reached will be put in writing, signed by all Parties, and witnessed by the dispute resolver. The Agreement will be printed, emailed, or photographed and sent to all Parties at the time of signing, or as soon as reasonably possible thereafter.

The Parties accept full responsibility for the form and effect of their final Agreement and will not hold the Facilitator responsible for any defects in its content or drafting.

- 17. Moral and Legal Authority.** Unless otherwise agreed, in writing, the Parties agree to be legally and morally bound by the spirit, substance, and terms of whatever Agreements, Determinations and/or Directions are generated through the Process.
- 18. Commitment.** By their signatures below the Parties and the dispute resolver confirm their agreement to the terms of this Contract and their understanding that these terms are fundamental conditions of their participation in the process.
- 19. Process Timetable** (days relate to business days):

| Activity (all online and as required) | Who | Date |
|--|-----------------|-----------|
| Initial Contact | Party(s) & DS | Day 1 |
| Triage: Parties, Issues, Process, Dispute Resolver | DS | Day 1 |
| Preliminary Planning Meeting | Parties & DR | Day 2 |
| Facilitation (meetings and document exchange) | Parties & DR | To Day 8 |
| Consensual Agreement (target) | Parties & DR | By Day 8 |
| Determination (written document, with reasons) | Parties & DR | By Day 10 |
| (Optional) Referral to IDM | Parties &/or DR | By Day 12 |
| IDM Process | Parties & IDM | By Day 17 |
| IDM Decision | IDM | By Day 20 |

- 20.** By their signatures below the Parties and the Dispute Resolver confirm their agreement to the above terms and their understanding that said terms are fundamental conditions of their participation in this process.

This agreement is made between: Dispute Solutions Pty Ltd and:

Party: Sign: Date:

Dispute Solutions

Party: Sign: Date:

Name: Jon Kenfield (Director) Sign: Date: