BUILDING DISPUTES TRIBUNAL
Te Taraipiunara Tautohe Hanga Whare

MEDIATION RULES

2025 Revision

BUILDING DISPUTES TRIBUNAL
TE TARAIPIUNARA TAUTOHE HANGA WHARE

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FOREWORD

The settlement of disputes by mediation is an important feature of the commercial and legal landscape.

Mediation is a consensual, confidential, and informal negotiation process in which parties to a dispute use the services of a skilled and independent mediator to assist them to define the issues in dispute, develop and explore settlement options, assess the implications of settlement options, and negotiate a mutually acceptable settlement of that dispute which meets their interests and needs.

The primary objectives of mediation are to enable and empower the parties to negotiate and resolve the dispute promptly, cost effectively, and confidentially rather than have a decision imposed upon them by a judge or arbitrator.

Mediation enables the parties to negotiate flexible and creative solutions which need not conform to strict legal rights or general community standards.

To meet those objectives, the Building Disputes Tribunal (**BDT**) has developed Mediation Rules (**Rules**) to promote and encourage the negotiated settlement and early and cost effective resolution of disputes by mediation. BDT has also developed a Mediation Protocol (**Protocol**) to provide a guide to the rights and responsibilities of all participants in the mediation process under these Rules.

The Rules and Protocol provide both a framework and detailed provisions to ensure the efficient and cost effective resolution of disputes by mediation. The Rules are set out in a manner designed to facilitate ease of use and may be adopted by agreement in writing at any time before or after a dispute has arisen.

The Rules are intended to give parties the widest choice and the capacity to adopt fully administered mediation procedures which are fair, prompt and cost effective, and that provide structure and certainty to the mediation process.

BDT has established itself as the independent, nationwide, specialist dispute resolution service provider to the building and construction industry in New Zealand and these Rules allow BDT to continue to offer a world class mediation service that is tailored to meet the needs and requirements of parties to building and construction disputes, and which is fundamentally and purposively directed to ensuring the resolution of building and construction disputes in a manner that is private, efficient, flexible, cost effective, and certain.

For more information visit: www.buildingdisputestribunal.co.nz.

BDT MODEL MEDIATION CLAUSE

The following mediation clause should be included in contracts where the parties wish to have any future disputes resolved by Mediation under these Rules:

“Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to mediation in accordance with the Mediation Rules of the Building Disputes Tribunal.”

NOTE: Parties to an existing dispute that have not incorporated the BDT Model Clause into a prior agreement may agree to refer that dispute to Mediation under these Rules by signing the Mediation Agreement at Appendix 2 to these Rules.

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MEDIATION RULES

SECTION I: INTRODUCTORY RULES

1.0 INTRODUCTION

1.1 These are the Mediation Rules of the Building Disputes Tribunal (**BDT**) and may be referred to as the BDT Mediation Rules (**Rules**).

1.2 Where a dispute has been referred to BDT for Mediation (or words to the same effect), the Mediation will be conducted in accordance with these Rules (as amended from time to time), subject to such modification as the Parties may agree in writing.

1.3 Unless the Parties have agreed in writing that the Mediation will be conducted in accordance with a particular version of these Rules, the version of these Rules in effect on the date the Application for Mediation is made will apply. Where the Parties have agreed to apply a particular version of these Rules, the Parties will be taken to have agreed in writing that the BDT Schedule of Fees and Expenses for Mediation in effect on the date the Application for Mediation is made will apply.

1.4 The version of the BDT Mediation Protocol (**Protocol**) in effect on the date the Application for Mediation is made will also apply.

1.5 BDT owns the copyright to these Rules and the Protocol, and they may only be used by Parties, or intending Parties, to a Mediation administered by BDT.

1.6 The functions of BDT under these Rules will be performed by the Registrar. All communications to BDT must be addressed to the Registrar and all communications with the Mediator must be copied to the Registrar.

2.0 DEFINITIONS

2.1 Unless the context requires otherwise, in these Rules:

APPLICANT means the Party seeking recourse to Mediation under these Rules and includes one or more Applicants.

APPLICATION FOR MEDIATION means an application, in the form from time to time published on the Website, for BDT to appoint a Mediator and administer the Mediation under these Rules.

BUILDING DISPUTES TRIBUNAL (**BDT**) means Building Disputes Tribunal Limited, a company incorporated under the Companies Act 1993 (company number 2301888).

CANCELLATION FEES means any fee payable in accordance with section 5 of Appendix 1 to these Rules.

COMMENCEMENT DATE means the date upon which BDT communicates the Mediator's appointment to the Parties by issuing a Notice of Appointment under these Rules.

DAY means, unless otherwise specified, a day of the week other than:

(a) a Saturday or Sunday;

(b) a day in the period commencing on 24 December in any year and ending with the close of 5 January in the following year; and

(c) a day that is an official holiday or non-business day in the home jurisdiction of BDT, the Mediator, or any Party.

EXPENSES means the actual disbursements for the Mediation including, but not limited to: travel, accommodation, meals, taxis, couriers, personal vehicle mileage charges, communication, secretarial and administration services, hireage of meeting rooms, interpreters, translators, and any other reasonable costs relating to the conduct of the Mediation.

FEES means BDT's fees as set out in Appendix 1 to these Rules.

MEDIATION means Mediation conducted under these Rules.

MEDIATOR means a Mediator appointed under these Rules.

MEDIATION AGREEMENT means a written agreement by the Parties to submit to Mediation under these Rules, all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not.

NOTICE OF APPOINTMENT means a written communication issued by the Registrar confirming the appointment of the Mediator by BDT.

NOTICE OF MEDIATION means the written notice required to be issued by the Applicant to initiate Mediation under these Rules unless the Parties have signed the Mediation Agreement in the form found at Appendix 2 to these Rules.

PARTY means a Party to a Mediation Agreement, or in any case where the Mediation does not involve all of the Parties to the Mediation Agreement, means a Party to the Mediation.

PRELIMINARY PAYMENT means any Fee payable in accordance with section 1 of Appendix 1 to these Rules.

REGISTRAR means a Registrar of BDT and includes any person deputed to act as a Registrar from time to time.

REPRESENTATIVE means any individual representing or assisting a Party to the Mediation, whether legally qualified or not.

SETTLEMENT AGREEMENT means a written agreement of the Parties recording the matters in dispute in respect of which agreement is reached during the course of the Mediation, and the terms of that agreement.

SUPPORT PERSON means a person who provides reassurance and emotional support for a Party at Mediation.

WEBSITE means the website for BDT which can be found at www.buildingdisputestribunal.co.nz.

2.2 Unless the context requires otherwise, in these Rules:

(a) words in the singular include the plural and vice versa;

(b) words importing a gender include every gender;

(c) a reference to "we", "our", "us", or "it" means BDT; and

(d) words used in the Mediation Agreement have the same meaning as that ascribed to them in these Rules.

3.0 INITIATING MEDIATION

3.1 Where the Parties have agreed to refer their dispute to Mediation prior to the dispute arising, the Applicant must communicate to every other Party a Notice of Mediation that includes :

(a) a demand that the dispute be referred to Mediation;

(b) the full names and all contact details of the Parties and their Representatives, including details for electronic communication where those are available;

(c) identification of the Mediation Agreement that is being invoked;

(d) identification of the legal instrument or the relationship out of, or in relation to which the dispute arises;

(e) a brief description of the nature of the dispute;

(f) the outcome that is sought; and

(g) the Applicant's proposal for a Mediator (if any).

3.2 No Notice of Mediation will be invalid for any failure to comply with the requirements of Rule 3.1 Any failure to comply with the requirements of Rule 3.1 may be rectified by the Applicant within five Days of receipt of notice of the defect.

3.3 Where Parties have not agreed to refer disputes to Mediation prior to a dispute arising, those Parties may refer that dispute to Mediation by signing the Mediation Agreement in the form found at Appendix 2 to these Rules. In such cases, a Notice of Mediation is not

required to be served on every other Party prior to completing the Application for Mediation.

3.4 The Applicant may, after the expiry of ten Days from the date of service of the Notice of Mediation on every other Party, or earlier if the Parties have agreed on a nominee or the Parties have signed the Mediation Agreement in the form found at Appendix 2 to these Rules, apply to BDT to appoint a Mediator by completing the Application for Mediation. The Application for Mediation must include:

(a) the Mediation Agreement;

(b) the Notice of Mediation (if relevant); and

(c) any document recording the Parties' agreement as to the Mediator, or, where no agreement has been reached:

(i) any proposal as to the Mediator, and if it exists, any response to that proposal; and

(ii) any document recording the Parties' agreement as to the preferred expertise of the Mediator, or where no agreement has been reached, any proposal as to the preferred expertise of the Mediator, and if it exists, any response to that proposal.

3.5 The Parties must pay BDT the Preliminary Payment as set out in section 1 of Appendix 1 to these Rules either before or immediately after the submission of the Application for Mediation.

3.6 No administrative or procedural steps will be taken by BDT in relation to the appointment of the Mediator until the Preliminary Payment has been paid in full.

3.7 Any Party may pay the whole of the Preliminary Payment to secure the immediate appointment of the Mediator.

SECTION II: APPOINTMENT OF MEDIATOR

4.0 SELECTION AND APPOINTMENT OF MEDIATOR

4.1 Unless the Parties have agreed otherwise, a sole Mediator will be appointed by BDT upon receipt of a duly completed Application for Mediation and the Preliminary Payment.

4.2 No Party or third person may appoint any Mediator under the Mediation Agreement. BDT alone is empowered to appoint Mediators.

4.3 If the Parties have agreed that any person is to be appointed as a Mediator, that agreement will be treated as an agreement to nominate a Mediator for all purposes. Any such nominee may only be appointed by BDT as a Mediator subject to his or her prior compliance with Rules 4.9-4.10. BDT may refuse to appoint any nominee if it determines, in its sole discretion, that he or she is not suitable, independent, or impartial.

4.4 In the event of either:

(a) refusal by BDT to appoint the Parties' nominee under Rule 4.3; or

(b) the Parties' nominee declining to accept appointment as a Mediator,

any Party may, after the expiry of five Days from the date BDT notifies the Parties that their nominee is unsuitable or unavailable to accept appointment as a Mediator, request in writing that BDT appoint the Mediator.

4.5 BDT may require each Party to provide such information as it deems necessary to fulfil its selection and appointment function under these Rules. BDT will have regard to such information but will not be bound by it in making such appointment as it sees fit.

4.6 BDT will take into consideration:

(a) any written agreement or joint nomination by the Parties;

(b) any particular method or criteria for selection of the Mediator agreed in writing by the Parties;

(c) all relevant circumstances, including the nature of the legal relationship out of or in connection with which the dispute arose;

(d) the nature and circumstances of the dispute;

(e) the monetary amount or value of the dispute;

(f) the number, location, and languages of the Parties;

(g) whether the Mediator will have sufficient availability to mediate the matter expeditiously in accordance with the Mediator's obligations under these Rules; and

(h) any other factors it considers relevant in the circumstances.

4.7 BDT will use best endeavours to make an appointment under these Rules within five Days of receipt of an Application for Mediation and the Preliminary Payment.

4.8 Every decision by BDT to appoint a Mediator under these Rules is final and binding on the Parties. It is not subject to appeal to BDT. BDT is not required to state or communicate reasons for its decision.

4.9 Any person who is not on an BDT approved list of Mediators, and who is approached in connection with his or her possible appointment as a Mediator under these Rules, must provide to the Registrar:

(a) a written resume of his or her past and present professional positions and experience as a Mediator;

(b) a schedule of his or her fee rates; and

(c) any other information the Registrar considers relevant.

4.10 Any person approached in connection with his or her possible appointment as a Mediator under these Rules must provide the Registrar with a written declaration disclosing, to the best of his or her knowledge:

(a) whether there are any circumstances, past or present, likely to give rise to justifiable doubts as to his or her impartiality or independence in the eyes of any of the Parties; and

(b) whether the candidate is ready, willing, and able to devote sufficient time, diligence, and effort to ensure the expeditious conduct of the Mediation in accordance with these Rules.

4.11 Unless the Parties agree otherwise in writing after full and proper disclosure has been made by a candidate, any Mediator conducting Mediation under these Rules must be impartial and independent of the Parties. No Mediator may act as an advocate for, Representative of, or advisor to, any Party. The Mediator will, from the time of his or her appointment, assume a continuing duty to immediately disclose to the Parties and BDT any circumstances arising in the future which might be likely to give rise to justifiable doubts as to that Mediator's impartiality or independence in the eyes of any of the Parties. This duty continues until the Mediation is concluded.

4.12 Any appointment made by BDT under these Rules will be confirmed by a Notice of Appointment issued by the Registrar.

5.0 REPLACEMENT OF MEDIATOR

5.1 BDT may revoke a Mediator's appointment and appoint a replacement Mediator upon its own initiative or on a written challenge by any Party if:

(a) that Mediator gives written notice to BDT and every Party of his or her intent to resign as Mediator; or

(b) the Parties agree to the revocation of the Mediator's mandate; or

(c) circumstances exist that give rise to justifiable doubts as to the Mediator's impartiality or independence; or

(d) the Mediator becomes in fact or in law, or by reason of infirmity, unable or unwilling to perform the functions of that office, or in fact fails to fulfil his or her functions under these Rules.

5.2 A Party may challenge a Mediator nominated by that Party only for reasons of which it becomes aware of after the appointment has been made.

5.3 A Party requesting replacement of a Mediator must notify the Mediator, every other Party, and BDT within five Days after becoming aware of the circumstances that give rise to the challenge (**Challenge Notice**). The Challenge Notice must state the grounds on which the request for replacement of the Mediator is based.

5.4 Every other Party and the Mediator may respond to the challenge. If they wish to exercise that right, they must within five Days of receipt of the Challenge Notice, communicate their response to BDT, every other Party, and the Mediator.

5.5 If every Party agrees to the request, or the Mediator voluntarily withdraws, BDT will use best endeavours to appoint a replacement Mediator within ten Days of receipt of the Challenge Notice. In either case, the replacement of the Mediator by BDT does not imply acceptance of the validity of any ground referred to in the Challenge Notice.

5.6 If every other Party does not agree to the request and the challenged Mediator does not withdraw, the decision as to whether to appoint a replacement Mediator will be made by BDT after the Mediator and every Party have had an opportunity to respond to the challenge.

5.7 BDT will use best endeavours to make a decision on the request for replacement of the Mediator within 15 Days of receipt of the Challenge Notice. Such a decision is of an administrative nature and is final and binding on the Parties and the Mediator. It is not subject to appeal to BDT. BDT is not required to state or communicate reasons for its decision.

SECTION III: MEDIATION PROCESS

6.0 MEDIATION

6.1 The Mediator may conduct the Mediation in such manner as the Mediator thinks fit, having regard to the nature and circumstances of the matters in dispute, and may arrange conferences and Mediation sessions at times to suit the Parties.

6.2 The Mediator may conduct the Mediation, in whole or in part, in person, by telephone or video conference, or by any other electronic communication means that the Mediator considers appropriate in the circumstances.

6.3 The Parties must co-operate in good faith with the Mediator and with every other Party to the dispute in attempting to settle the matters in difference. The Parties must comply with the Mediator's reasonable directions to attend Mediation sessions and provide information.

6.4 The Mediator may conduct joint and separate sessions with any or all of the Parties at any time during the Mediation.

6.5 The Mediator will not provide legal advice.

6.6 The Mediator may, at his or her sole discretion, provide an analysis or evaluation of the relevant facts, evidence, and legal merits of the matters in dispute in the Mediation to promote settlement discussions. In providing any such analysis or evaluation:

(a) the Mediator will be acting as an independent neutral expert and not as an advisor to the Parties; and

(b) any evaluation is not binding on the Parties, and any decision the Parties may make for the purpose of settling the dispute, whether in whole or in part, must be based entirely in reliance on their own skill and judgement, having taken independent legal advice and having made their own enquiries, and not in reliance on any understandings, statements, opinions or representations made by the Mediator.

6.7 The Parties may not at any time before, during, or after the Mediation, call the Mediator to testify in any legal or administrative proceeding concerning the dispute, or the nature and extent of any agreement reached as a result of the Mediation.

6.8 The Parties may not call for the records, notes, or work product of the Mediator for any purpose, including any legal or administrative proceedings that might arise before, during, or after the Mediation. However, any Settlement Agreement resulting from the Mediation that is intended by the Parties to have legal effect and to be legally enforceable, may be subpoenaed, called for, or produced in any proceedings to which it is relevant.

6.9 The Mediation will be held without prejudice to any other legal rights or remedies available to the Parties.

Representation and Support

6.10 Each Party must be represented at all conferences and Mediation sessions by a person with authority to make final and conclusive decisions.

6.11 Parties may be represented at Mediation by any person, whether legally trained or not, provided that the engagement of the Representative by a Party does not threaten or bring into question the integrity of the Mediation due to a past or present relationship with any Party or the Mediator, unless none of the Parties object after proper disclosure.

6.12 Parties may bring a Support Person to the Mediation session. A Support Person may provide reassurance and emotional support for a Party. Otherwise, a Support Person is not entitled to intervene or participate in the Mediation process.

6.13 Parties must advise BDT, the Mediator and every other Party of the names and relevant details of those persons who will be accompanying them at any Mediation session not less than three Days prior to the session. All Representatives and Support Persons will be required by the Mediator to sign a Confidentiality Agreement in the form found at Appendix 3 to these Rules as a condition of their attendance at the Mediation.

6.14 The Mediator may withhold approval for a Representative or Support Person to attend Mediation where the Mediator, in his or her sole discretion, considers their attendance could threaten or bring into question the integrity of the Mediation.

6.15 The Mediator, in his or her sole discretion, may limit the number of Representatives and/or Support Persons to preserve the integrity of the Mediation.

Fees and Expenses

6.16 The Parties must pay BDT the relevant Fees and Expenses set out in Appendix 1 to these Rules. BDT's Fees and Expenses are payable in advance by way of security for future Fees and Expenses, and within three Days of receipt of an invoice for any additional Fees and/or Expenses.

6.17 The Parties are jointly and severally liable for the Fees and Expenses of the Mediation, together with any additional costs howsoever incurred by BDT in recovering any overdue monies, on a full indemnity basis.

SECTION IV: GENERAL RULES

7.0 CONFIDENTIALITY

7.1 The Mediator must conduct the Mediation in private.

7.2 The Parties, their Representatives, Support Persons, the Mediator, BDT, and any other person involved in the Mediation, must keep confidential and not publish, communicate, or otherwise supply (**disclose**) confidential information to any non-party. Confidential information includes all non-public materials and information that relates to the Mediation or to any Settlement Agreement and includes:

(a) the fact of the Mediation itself;

(b) all statements, admissions, or other information supplied to the Mediator by a Party;

(c) any notes made by the Mediator;

(d) any document otherwise created or made for the purpose of the Mediation;

(e) all matters disclosed orally in the course of the Mediation;

(f) all non-public materials and information provided for the Mediation by a Party, including documents used or generated for the purpose by a Representative or advisor to a Party in the Mediation; and

(g) the terms of any Settlement Agreement.

(**Confidential Information**)

7.3 If a Party seeks to involve, or is required to involve in the Mediation, a non-party, including a Representative, Support Person, fact or expert witness, translator, interpreter, or any other person, that Party must secure the non-party's advance agreement to preserve the confidentiality of the Confidential Information. This agreement must be recorded in the form provided at Appendix 3 to these Rules, and a copy of the Confidentiality Agreement signed by each non-party must be provided to the Mediator by that Party as a condition of that non-party's participation in the Mediation.

7.4 Notwithstanding Rules 7.1-7.3, BDT, a Party, a Representative, a Support Person, the Mediator, or a non-party involved in the Mediation, may disclose Confidential Information to the extent necessary to:

(a) protect the safety of any person from being endangered;

(b) enforce any Settlement Agreement reached in the Mediation;

(c) pursue a legal right;

(d) protect a Party's legal rights in relation to a third party;

(e) respond to a legitimate subpoena, governmental request for information, or other compulsory process;

(f) seek legal, accounting, or other professional services, or satisfy information requests of potential acquirers, investors or lenders, provided that in each case the recipient agrees in advance to preserve the confidentiality of the Confidential Information; or

(g) comply with an order of a court of competent jurisdiction, or the law of any State which is binding on the Party making the disclosure,

provided always that such publication, disclosure, or communication is no more than what is reasonably required for those purposes.

7.5 Any person intending to make disclosure under Rule 7.4(b)-(g) must, within a reasonable period of time prior to the intended disclosure, notify the Mediator, every Party, and BDT.

7.6 The notification must include full details of the intended disclosure and an explanation of the reason for it.

8.0 SUSPENSION/TERMINATION

8.1 The Mediation may be suspended or terminated at any time:

(a) by a Party, after consultation with the Mediator; or

(b) by the Mediator, if the Mediator feels unable to assist the Parties to achieve resolution of the dispute; or

(c) by the Mediator, if the Mediator determines on reasonable grounds that any Party is not engaged in the Mediation in good faith; or

(d) by BDT, if the Parties fail to make any payment under these Rules.

9.0 SETTLEMENT

9.1 If agreement is reached on any or all matters, such agreement must be recorded in a Settlement Agreement signed by all Parties. Any Settlement Agreement will be legally binding on the Parties, and any Party may enforce the terms of the Settlement Agreement by issuing court proceedings.

9.2 If the Mediator considers that any agreement reached may be illegal or impossible to enforce or uphold, the Mediator may recommend to the Parties that they take further independent legal advice.

9.3 The Parties are under a duty at all times following the Mediation to abide by the terms of any Settlement Agreement in good faith and in a timely manner.

10.0 NO SETTLEMENT – ARBITRATION

10.1 If no agreement that finally resolves all the matters in dispute is reached within thirty Days of the Commencement Date, any Party may refer the dispute to arbitration for final and binding determination in accordance with the BDT Arbitration Rules.

11.0 EXCLUSION OF LIABILITY AND INDEMNITY

11.1 The Parties, together and separately, release and discharge the Mediator and BDT, its agents and employees, from all liability of any kind (whether involving negligence, misrepresentation, breach of contract, or breach of any equitable, fiduciary, statutory or other duty, or otherwise) which may be alleged to arise in connection with, or to result from, or to in any way relate to the exercise of any of their functions, duties or powers, whether at law, under these Rules, or otherwise, unless the act or omission is the fraudulent act of the Mediator, BDT, its agents or its employees. The Mediator, BDT, or any agent or employee of BDT, who has not acted fraudulently and is shown to be unaware of the fraud of any other person, will continue to be released and discharged from liability as provided in these Rules.

11.2 No statements or comments, whether written or oral, made or used by the Mediator, BDT, its agents or employees in connection with, or resulting from, or in any way relating to the Mediation, may be relied upon to found or maintain any action for defamation, libel, slander, or any related complaint.

11.3 The Parties, together and separately, undertake to indemnify and keep indemnified the Mediator and BDT, its agents and employees, against all claims, costs, expenses, liabilities, awards, damages, and proceedings of any kind (properly sustained or incurred by them directly, or indirectly made by any third party) in relation to, or in connection with, the exercise of their functions, duties, or powers, whether at law, under these Rules, or otherwise, unless the act or omission is the fraudulent act of the Mediator, BDT, its agents or its employees. If the Mediator, BDT, or any agent or employee of BDT has not acted fraudulently and is shown to be unaware of the fraud of any other person, he or she will continue to be indemnified as provided in these Rules.

11.4 The purpose of Rules 11.1-11.3 is to provide the Mediator, BDT, its agents and employees, with the widest immunity from liability that the law will allow.

12.0 COMMUNICATIONS AND CONTACT DETAILS

12.1 Until the Mediator is appointed, all communications relating to the Mediation must be directed to the Registrar.

12.2 Thereafter, all communications between the Parties and the Mediator must be made directly to the Mediator and copied to the Registrar.

12.3 Communications and notifications between BDT, the Mediator, and the Parties may validly be made by email, or any other means of communication that provides or allows for a record of transmission.

12.4 The communication will be deemed to have been received on the Day it is so delivered.

12.5 A notice transmitted by electronic means is deemed to have been received on the Day it is sent, excepting a Notice of Mediation which is only deemed to have been received on the Day when it reaches the addressee's electronic address.

13.0 MISCELLANEOUS

13.1 All decisions by BDT with respect to its functions and obligations under these Rules are final and binding on the Parties and the Mediator. Such decisions are of an administrative nature and BDT is not required to state or communicate reasons for its decisions.

13.2 By agreeing to Mediation under these Rules, the Parties and the Mediator are deemed to have agreed not to apply to any court, judicial authority, or any other body having jurisdiction, for any relief regarding BDT's jurisdiction or authority under these Rules.

13.3 In all matters not expressly provided for in these Rules, the Parties, BDT, and the Mediator must act in the spirit of these Rules and must make every effort to ensure that a Settlement Agreement made under these Rules is enforceable.

13.4 The Registrar may from time to time issue Practice Notes to supplement, regulate, and implement these Rules for the purpose of facilitating the administration of Mediations governed by these Rules.

APPENDIX 1: BDT FEES AND EXPENSES FOR MEDIATION

All sums stated are in New Zealand dollars and are inclusive of GST (if any).

1.0 MEDIATION FEES AND EXPENSES

Preliminary Payment

A **Preliminary Payment** must be made to BDT either before or immediately after the submission of the Application for Mediation. The Preliminary Payment is a payment toward the Mediation Fee, to be calculated in accordance with the Applicant's reasonable estimate of the aggregate amount in dispute.

No administrative or procedural steps will be taken by BDT in relation to the appointment of a Mediator until the Preliminary Payment has been paid in full.

For the purpose of calculating the value of the dispute, the Parties must include GST, value added tax, or any other similar tax which might apply.

Interest will not be taken into account unless the interest claims exceed the aggregate principal amount, in which case the Mediation Fee will be calculated on the value of the interest claim alone.

The Preliminary Payment for Mediation includes all advance preparation time and attendances by the Mediator at a Mediation session for one Day or part Day (a Day is defined as the 8.0-hour period between 9.00am and 5.00pm on any given Day of the year). Any extra time required for attendances on the duties of the Mediation beyond 8.0 hours on any one Day is charged on an hourly basis. The Preliminary Payment also includes a non-refundable administration fee of $1,250.00 which amount is payable in full, whether or not the claim is settled, or the Mediation Agreement is withdrawn by the Parties, or a Settlement Agreement is made prior to the Mediation.

The Preliminary Payment does not include the usage, hire, and cost of facilities and support services for or in connection with the Mediation.

The amount of the Preliminary Payment to be paid as security for the Mediation, and the rates for additional Mediation time over and above a period of 8.0 hours on any given Day are as follows:

Value of Dispute	Preliminary Payment: includes cost of mediation up to 8.0 hours per Day	Additional time: Hourly rate for time beyond 8.0 hours on any Day
≤ $ 99,999.99	$8,500.00	$550.00
$100,000.00 ≤ $ 249,999.99	$9,250.00	$600.00
$250,000.00 ≤ $ 499,999.99	$10,000.00	$650.00
$500,000.00 ≤ $ 999,999.99	$10,750.00	$700.00
≥ $1.0M	$11,500.00	$750.00
Rights and obligations dispute	$10,000.00	$650.00

All Expenses incurred by BDT in relation to the Mediation are additional to the Preliminary Payment and are charged at cost. Such Expenses may include for example, travel costs and accommodation, room and equipment hire, and refreshments.

Supplementary advances – disbursements

Prior to the first Mediation session, BDT may request a supplementary advance from the Parties towards the expected Fees and Expenses of the Mediation, including the Mediation Fees where it is anticipated that more than one Day of Mediation will be required, and/or to meet travel costs, accommodation, and venue hire.

During the course of the Mediation, BDT may from time to time request one or several further supplementary, interim, and/or final advances and deposits from the Parties towards the Fees or Expenses of the Mediation, incurred or to be incurred on behalf of, or for the benefit of, the Parties. All such advances are to be paid into the trust account of BDT on demand.

Any interest which may accrue on such deposits will be retained by BDT as its own property.

If any required deposit or advance is not paid in full within three Days after receipt of the request, the Registrar will so inform the Parties in order that one or another of them may make the required payment. If payment is not made within a further three Days, the Registrar may order the suspension or termination of the Mediation.

As soon as practicable after the Mediation is concluded, BDT will render a final statement of accounting to the Parties and will reimburse any unexpended balance of the security monies to the Parties in the proportions paid by each Party, unless otherwise directed by the Parties.

2.0 WHEN IS PAYMENT REQUIRED?

The **Preliminary Payment** must be made to BDT either before or immediately after submission of the Application for Mediation.

A **Supplementary Payment** will be required to be made at least five Days prior to the first scheduled Mediation session, towards the expected Fees and Expenses of the Mediation, including Mediation Fees where more than one Day is anticipated to be required, and/or to meet Expenses incurred or to be incurred on behalf of, or for the benefit of the Parties.

A **Further Supplementary Payment** will be required to be made if the Fees and Expenses payable in relation to the Mediation are greater than the security held.

The Parties must pay any Supplementary Payment within three Days of receipt of notification by BDT of such additional Fees and Expenses.

BDT will generally require payment of all Fees and Expenses in advance of delivery of the Mediation services. No administrative or procedural steps will be taken by BDT or the Mediator while any payment is outstanding under these Rules.

3.0 LIABILITY FOR PAYMENT

The Parties are free to make any arrangements as between them for payment of the Mediation Fees and Expenses.

However, and notwithstanding any agreement as between the Parties, the Parties will at all times be jointly and severally liable for the Mediation Fees and Expenses, together with any additional costs howsoever incurred by BDT in recovering any overdue monies on a full indemnity basis.

4.0 METHODS OF PAYMENT

Payment of all BDT Fees and Expenses may be made by direct credit, bank transfer, or by credit card (Visa and MasterCard only). A merchant transaction fee of 2.95% is payable in addition to the published BDT Fee for all credit card payments.

All BDT Fees, Expenses, and costs related to the Mediation will be invoiced in New Zealand dollars, but may be paid in other convertible currencies at rates prevailing at the time of payment, provided that any transfer and/or currency exchange charges must be borne by the payer.

5.0 CANCELLATION FEES

In any case where a Party notifies BDT in writing that a scheduled Mediation session is to be vacated, whether or not the dispute between the Parties has been settled, or the Mediation session is adjourned by agreement, or the Application for Mediation is withdrawn or terminated by the Parties or the Mediator for any reason whatsoever, and the notice is received by BDT (or the termination is made) during ordinary business hours between ten and six Days from and including the date of the scheduled Mediation session, BDT may charge a Cancellation Fee in the amount of 50% of the Mediation daily rate for the entire period of time set aside for attendances on the Mediation.

If such notice is received, or termination is made, five Days or less from and including the date of the scheduled Mediation session, BDT may charge a Cancellation Fee in the amount of 75% of the Mediation daily rate for the entire period of time set aside for attendances on the Mediation.

In the event that the dispute is settled, or the Mediation Agreement is withdrawn by the Parties, the Mediation Fees and Expenses incurred prior to that date, including any entitlement to Cancellation Fees, will be deducted from the amount paid as security for the Mediation.

The balance of the security monies will be refunded to the Parties in the proportions in which the security payment has been made, unless the Parties agree otherwise and instruct BDT accordingly in writing within five Days of notice of settlement or withdrawal of the Mediation Agreement.

In the event that the Mediation Fees and Expenses are greater than the amount held as security, the Parties must pay the balance within three Days of receipt of notification by BDT of such additional Fees and Expenses.

APPENDIX 2: MEDIATION AGREEMENT

By an Agreement

Dated this day of (month) (year)

BETWEEN:

_____ First Party

AND

_____ Second Party

Together, the **Parties**

The Parties are parties to **(*define legal relationship*):**

Entered into on or about **(*enter date*):**

For, or in relation to **(*enter detail*):**

The Parties have agreed that [all matters in dispute between them / the matters in dispute between them set out in the Schedule attached hereto **(*delete one*)**] shall be referred to Mediation in accordance with the Mediation Rules of the Building Disputes Tribunal (**BDT Mediation Rules**).

On execution of this Mediation Agreement, any Party may initiate the Mediation by completing an Application for Mediation in terms of Rule 3.4

For the avoidance of doubt, under this Mediation Agreement the Applicant is not required to serve a Notice of Mediation under Rule 3.1 to initiate the Mediation or to attach such Notice to the Application for Mediation under Rule 3.4(b).

Notices to the First Party:

Notices to the First Party shall be given to an address for service which is:

Phone:

Mobile:

Email:

Notices to the Second Party:

Notices to the Second Party shall be given to an address for service which is:

Phone:

Mobile:

Email:

I certify that: I have read and understood this Mediation Agreement and the BDT Mediation Rules; and

I agree to be bound by the terms of this Mediation Agreement and the BDT Mediation Rules.

First Party		**Second Party**	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Position:	_____	Position:	_____
In the presence of:			
Name:	_____	Name:	_____
Address:	_____	Address:	_____
Occupation:	_____	Occupation:	_____

SCHEDULE OF MATTERS IN DISPUTE FOR REFERENCE TO MEDIATION

The Parties have agreed that the following matters in dispute are the matters to be submitted to Mediation:

(a) [ ]

(b) [ ]

APPENDIX 3: CONFIDENTIALITY AGREEMENT FOR NON-PARTIES

I have read and understand that I am bound by Rules 7.2 - 7.6 of the BDT Mediation Rules. I understand that by being involved in, or being privy to, BDT Mediation, I am bound by these Rules.

I understand that I am not to disclose any information obtained in relation to the Mediation, including the fact of the Mediation itself, except in accordance with Rules 7.4 - 7.6.

I understand that I owe all Parties, BDT, the Mediator and any other non-parties involved in the Mediation, a duty of confidence, and that failure to comply with this duty may result in legal consequences.

I understand that if I intend to make a disclosure of any Confidential Information, I must notify all persons listed in Rule 7.5.

Dated this day of (month) (year)

Signed: _____

Name: _____