

AGREEMENT TO MEDIATE

Dated

BETWEEN

AND PHILLIP DAVID GREEN (the mediator)

APPOINTMENT OF THE MEDIATOR

1. The parties appoint the mediator to assist them to resolve the dispute that is briefly described in **Item 1** in the schedule to this agreement (**the Dispute**).
2. The mediator accepts the appointment to mediate the Dispute at the time and place set out in **Item 2** of the schedule or at another time or place agreed by the parties and the mediator.

ROLE OF THE MEDIATOR AND OF THE PARTIES

3. The mediator and each party will use their best endeavours to resolve the Dispute by:
 - 3.1. Systematically identifying the issues in dispute;
 - 3.2. Developing alternatives and options for the resolution of the Dispute;
 - 3.3. Exploring the usefulness of each alternative; and
 - 3.4. Seeking to achieve a resolution which is acceptable to the parties and which meets their interests and needs.
4. The mediator will be neutral and impartial.
5. The mediator will not:
 - 5.1. Impose an outcome on any party; or
 - 5.2. Make any decision for any of the parties.
6. The mediator can meet with the parties jointly and/or separately, as the mediator determines.

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CONFLICT OF INTEREST

7. The mediator must, before the commencement of the mediation, disclose to the parties, to the best of the mediator's knowledge, any prior association with any of the parties as well as disclose any interest in the dispute.
8. If, in the course of the mediation, the mediator become aware of any circumstances that might reasonably be considered to affect the capacity to act impartially, the mediator must inform the parties of those circumstances and the parties may agree that the mediator may continue to mediate.

CO-OPERATION OF THE PARTIES

9. The parties shall co-operate in good faith with the mediator and with each other in attempting to settle the dispute.
10. Each party will comply with the reasonable requests and directions of the mediator in relation to the conduct of the mediation, including provision of documents, information and submissions.

PRE-MEDIATION MEETINGS

11. As part of the mediation, the mediator may conduct pre-mediation meetings in order to establish a timetable and procedure for the conduct of the mediation and to gain a preliminary understanding of the issues.
12. The pre-mediation meetings can take place with the parties and/or their representatives as agreed by the parties or as requested by the mediator. Pre-mediation meeting attendances can either be in person or by telephone conference as determined by prior agreement between the parties or by the mediator.
13. The mediator may meet with either party separately for the purpose of better understanding the issues and/or helping prepare a party to understand the mediation process and the steps that can be taken to enhance the prospect of a successful mediation outcome.

SUBMISSIONS AND DOCUMENTS EXCHANGED PRIOR TO MEDIATION MEETINGS

14. Any party may send to the mediator a written submission stating briefly the dispute, the relevant facts, and its interests and concerns.
15. The written submission may include written statements of factual or expert information.

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16. Copies of relevant documents may be attached to any written submission.
17. Copies of all submissions and other documents sent to the mediator are to be copied and sent to all other parties named in this Agreement.
18. Parties may communicate confidential information to the mediator on the condition that it is not communicated to the other party without permission.

AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION

19. Each party must have in attendance at the mediation a person or persons who will have the ultimate authority to settle the dispute. If that is not reasonably practical, the mediator and other parties are to be notified prior to the mediation and each party must then have in attendance at the mediation a person with sufficient authority to recommend to the ultimate decision maker whether or not and in what manner to settle the dispute. The person attending should have sufficient seniority such that their recommendation is very likely to be accepted.
20. A party may choose to be represented by one or more persons. The names of the additional persons shall be communicated in writing to the mediator and to the other participants.
21. Other persons may attend meetings only with the consent of all parties and the mediator. Consent would normally be given to advisers, such as legal, managerial, technical, planning or human resource persons.

CONDUCT OF MEDIATION

22. The mediator may conduct the mediation in the manner the mediator thinks appropriate, having regard to the nature and circumstances of the dispute and the wishes of the parties.
23. The mediator will arrange a timetable to suit the convenience of the parties, and where the parties cannot agree a venue for the mediation, will arrange a venue for the mediation.
24. The mediator shall not be bound by any formal procedures or rules of evidence, and may become informed in relation to any matter in such manner as the mediator thinks fit.
25. The mediator may conduct joint and separate meetings with any one or more of the parties.

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26. During the course of the mediation, the mediator may ask questions of clarification and may request the parties to exchange or further explain their opening statements or submissions where they have been given.
27. The mediator will not provide any assessment of matters in dispute (i.e. of any factual or legal questions, or the likely outcome of any aspect of the dispute). The mediator will not give any opinion of party prospects of success in the event of litigation.

CONFIDENTIALITY OF THE MEDIATION PROCESS

28. Any information disclosed during the mediation process by a party, or that party's representative in private, will be treated by the mediator as confidential to the extent permitted by law, unless the party making the disclosure states otherwise.
29. The parties and the mediator will not disclose to any person not present at the mediation any information or document given to them during the mediation, unless required by law to make such disclosure, or unless permitted or required to do so within the terms of this Agreement.
30. A party may disclose information or documents obtained during the mediation to a person not present at the mediation where that party needs to do so in order to obtain professional advice or where the person is within that party's legitimate field of intimacy. A party disclosing information or documents in these circumstances must inform the professional adviser or any such person that the information or documents are confidential.
31. The parties and the mediator agree that, subject to the terms of this Agreement and subject also to the requirements of law, the following will be kept confidential to the parties and will not be disclosed, tendered as evidence, or be the subject of a subpoena to give evidence or produce documents, in any judicial, arbitral or other forms of proceedings relating to the dispute:
 - 31.1. Any settlement proposal, whether made by a party, person at the mediation or by the mediator;
 - 31.2. The willingness of a party to consider such a proposal;
 - 31.3. Any statement, or exchanges made or views or opinions stated or expressed by a party, whether orally, by gesture or in writing or by other persons attending or by the mediator during the mediation;
 - 31.4. Any information or document prepared for or provided during the mediation process;

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- 31.5. Any notes made or held by the mediator including notes made at the time of inquiry to mediate the dispute and any notes pertaining to or touching upon the mediation.
32. If a party produces a document at the mediation that otherwise would be privileged from production or from admission into evidence, that party does not waive that privilege by producing the document.
33. The parties agree that the mediator, at the mediator's election, may waive confidentiality where the confidential information received discloses that a person is at real risk of apparent physical danger.
34. The parties acknowledge that the mediator may have an ethical duty to disclose to a third party that a person or persons are at real risk of personal harm or are being harmed.
35. Subject to the terms of this Agreement, and unless directed by a Court, Tribunal or other form with rights of subpoena, the mediator shall not divulge any aspect of the mediation in any other proceeding. If subpoenaed to testify in any other proceeding, the mediator shall immediately inform the other parties. Unless all of the parties waive confidentiality, the mediator shall inform the Court, Tribunal or other forms of the Terms of this Agreement to Mediate the dispute, and may produce this document to the Court. The mediator shall not divulge any matters disclosed in the mediation unless directed to do so by the Court, Tribunal or other forum or as required to do so by law.
36. The mediator shall not subsequently accept appointment as advocate or expert witness or otherwise provide assistance to any of the parties in connection with any related proceedings, except for purposes of proving any settlement agreed to by the parties.

SETTLEMENT

37. The mediator does not have the authority to impose a settlement on the parties, but will try to help them reach a mutually acceptable resolution of their dispute. The parties agree that by entering into terms of settlement they have the authority to settle the dispute.
38. The scope and terms of settlement which the parties may develop are not necessarily limited by the subject matter of the dispute, by any contract, by any rights or obligations of the parties, or by any recommendation of the mediator. The mediator makes no representation that any such Settlement Agreement between the parties will resemble or equate to any result which might be achieved in a contested arbitration, trial, or any other forum determining the dispute.

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39. The parties, if they achieve settlement, will be expected to make a binding commitment to the settlement of the dispute and all parties should take all necessary legal advice before the mediation commences and have access to any legal advice during the mediation process.
40. Being involved in mediation shall not prejudice any existing legal right of the parties. However, any settlement agreement may change their legal rights and is likely to be legally enforceable as a contract.
41. If the mediator considers the agreement being reached may be impossible to uphold or may be illegal, the mediator will recommend to the parties that they obtain independent legal advice, and themselves may, if asked to do so, decline to witness any settlement agreement.

RECORDING OF SETTLEMENT

42. If the parties agree to resolve the dispute, a written record of the essential terms of the settlement must be set out in a Settlement Agreement and be signed by or on behalf of the parties, before they leave the mediation. This provision addressing the recording of any settlement terms can only be altered by the parties by written agreement signed by all parties to the mediation and witnessed by a participant in the mediation. In the absence of a written signed and witnessed document, amending this provision, the parties acknowledge that the dispute or such part of it that remains unrecorded and unsigned by the parties has not been resolved. Save for the document recording the terms of settlement, all other oral and documentary information, statements, exchanges, views, opinions and any other communication made by or between the parties or by other persons who participated in the mediation, shall remain confidential both in terms of paragraphs 28 to 36 herein and in terms of any Confidentiality Agreement signed by the parties and/or other participants in the mediation.

ENFORCEMENT OF SETTLEMENT AGREEMENTS

43. A party seeking to enforce a Settlement Agreement made at the mediation may call evidence of the fact that the parties entered into an Agreement to Mediate and the fact that a Settlement Agreement resulted, with both documents being able to be produced. Evidence may be called from the mediator and from any other person present at the mediation, for the purpose of proving the written terms of Agreement to Mediate, the fact that a mediation occurred and the written terms of the Settlement Agreement.
44. Any written, signed and witnessed agreement by the parties varying the terms of paragraph 42 herein such as to dispense with the recording of any settlement terms in

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writing, may be produced by any party in any court or other forum, for the purpose of seeking to enforce the oral agreement to settle.

45. In the absence of the parties having a written signed and witnessed document varying the provision of paragraph 42 herein, the parties acknowledge that the mediator may not be called to try and prove any variation to paragraph 42. The parties further expressly acknowledge that the mediator may not be called by any party to prove the fact of or terms of a purported oral settlement agreement even if supported by a written, signed and witnessed agreement to vary the terms of paragraph 42.

INDEMNITY AND EXCLUSION OF LIABILITY

46. The parties agree that the mediator will not be liable to any party for any act or omission in the performance of their duties and obligations as mediator under this agreement, unless the act or omission is fraudulent. This exclusion of liability includes, but is not limited to, comments, suggestions, or evaluative assessments given by the mediator on fact or law.
47. The parties, together and separately, indemnify the mediator against any claim for any act or omission in the performance of the mediator's duties under this agreement, unless the act or omission is fraudulent.

THE COST OF THE MEDIATION

48. The parties, unless they have agreed some other arrangement, shall meet their own costs of the mediation.
49. The parties agree to pay the mediator the fees and disbursements as arranged between it and the mediator.
50. The mediator may from time to time invoice the parties for fees and expenses incurred and may require a payment by way of security for future fees and expenses. Any invoices shall be paid within 14 days.

COMMENCEMENT AND TERMINATION OF THE MEDIATION

51. The mediation and terms of this Agreement to Mediate shall be deemed to come into effect when both parties have agreed the appointment of the mediator and the mediator has been advised of that fact and has in any way communicated with any of the parties in relation to the mediation. The parties acknowledge that the terms of this Agreement to Mediate have been available to them at *www.pdgreen.com* and that the terms of the

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web edition of the Agreement to Mediate they relied upon is as recorded at the end of the Agreement to Mediate as signed by the parties.

52. A party may terminate its involvement in the mediation at any time, but only after consultation with the mediator.
53. The mediator may terminate their involvement in the mediation if, after consultation with the parties, the mediator decide that they are unable to assist the parties to achieve resolution of the dispute.
54. The mediator may terminate the mediation if the mediator considers that a party's safety, or the safety of any person attending the mediation (including that of the mediator), is at risk.
55. The mediation shall be terminated automatically upon execution of a Settlement Agreement in respect of the dispute referred to mediation.
56. Termination shall not relieve the obligation to pay the mediator's fees and expenses.

Agreement to Mediate edition date: 21 February 2012

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SCHEDULE

ITEM 1	

ITEM 2	
Date of mediation:	
Place of mediation:	
Commencement time of mediation:	

SIGNED by _____

SIGNED by _____

SIGNED by _____

SIGNED by _____

SIGNED by the Mediator _____
Phillip D Green

**CONFIDENTIALITY AGREEMENT SIGNED BY NON PARTIES
(INCLUDING ADVISERS) ATTENDING THE MEDIATION**

As the condition of my being present or participating in this mediation, I agree that I will, subject to the terms of this Agreement to Mediate and unless otherwise compelled by law, preserve total confidentiality in relation to the course of proceedings in the mediation and in relation to any exchanges that may come to my knowledge, whether oral or documentary, concerning the dispute passing between any of the parties and the mediator or between any two or more of the parties during the course of the mediation.

This agreement does not restrict my freedom to disclose and discuss the course of proceedings and exchanges in the mediation within the organisation and legitimate field of intimacy of the party on whose behalf or at whose request I am present at the mediation, including the advisers and insurers of that party provided always that any such disclosures and discussions will only be on this same basis of confidentiality.

DATED:

SIGNATURE

SIGNATURE

SIGNATURE

SIGNATURE

SIGNATURE

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