

SAMPLE AGREEMENT FOR EXPERT DETERMINATION

15 November 2015

PARTIES IN DISPUTE:

Party 1

and

Party 2

EXPERT:

J E Marshall SC

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A. INTRODUCTION

1. There is a dispute between the parties which they wish to have determined by the Expert in accordance with this agreement.
2. The dispute is described under the heading "Dispute description" on page 4.
3. By this agreement the parties appoint the Expert to determine the dispute as an expert and not as an arbitrator.

B. ROLE OF THE EXPERT

4. The Expert will:
 - (1) determine the dispute in accordance with the terms of this agreement;
 - (2) act as an expert and not as an arbitrator;
 - (3) subject to any restrictions contained in this agreement, proceed in any matter he thinks fit in order to make the determination.
5. The Expert discloses that:
 - (1) he has not had any prior involvement in the dispute;
 - (2) so far as he can recall, he has not had any prior dealings with **Party 1/Party2**;

- (3) he has had prior dealings with Party 1/Party2 but does not believe any of those prior dealings impact upon his impartiality or ability to fairly decide the dispute;
 - (4) he has had prior dealings with the law firms representing the parties but does not believe any of those prior dealings impact upon his impartiality or ability to fairly decide the dispute.
6. Having considered the disclosures the parties wish to confirm the appointment of the Expert.
 7. If, in the period between the date of this agreement and the giving of reasons determining the dispute, the Expert becomes aware of any circumstances that he believes materially affects his capacity to act impartially, he will notify the parties of those circumstances before incurring any further fees or charges.
 8. In the event of such a notification, unless within 7 days of the date of the notification all the parties in writing sent to the Expert agree to continue with the process, the process will be deemed to have terminated on the expiry of 7 days. The fees and charges of the Expert incurred to that date will still be payable by the parties in accordance with this agreement.
 9. The Expert will not be liable to any party, except in the case of fraud by the Expert, for any act or omission by the Expert in the performance or purported performance of the Expert's obligations under this agreement.
 10. The parties jointly and severally release the Expert from and indemnify the Expert against all liability of any kind whatsoever (whether involving alleged negligence or not) arising out of or in any way referable to any act or omission by the Expert in the performance or purported performance of the Expert's obligations under this agreement (save in the case of fraud by the Expert).
 11. To the extent that the Expert has immunity from suit under the general law, nothing in this agreement is intended to limit such immunity.

C. PROCESS

12. Unless the parties subsequently agree otherwise, the process will involve the following steps:
 - (1) The provision of all documents relied upon by the parties in electronic form to the Expert.
 - (2) If some factual matters are agreed between the parties, a statement of the agreed facts is to be provided to the Expert in MS Word format.
 - (3) If evidence of witnesses is to be relied upon, the evidence of each witness is to be provided in the form of a statutory declaration.
 - (4) Unless the parties and the Expert agree otherwise, there will be no examination or cross examination of any witness.
 - (5) The parties are to provide written submissions to the Expert in accordance with a timetable the parties agree, or failing agreement, in accordance with a timetable set by the Expert.
 - (6) If after the last of the intended written submissions has been provided to the Expert, the Expert considers he requires further submissions on some point(s), the Expert may call for a further written submission or for an oral

submission. If an oral submission is called for it must take place either in a hearing in person (or by teleconference) which involves the Expert and representatives of all parties.

13. The parties will use their reasonable endeavours to comply with the Expert's requests and directions.
14. The parties must be legally represented during the process.
15. The process may be terminated at any time by the agreement of all parties to the dispute. In the event all parties reach agreement to terminate the process, the Expert must be notified of such agreement. The fees and charges of the Expert incurred to that date will still be payable by the parties in accordance with this agreement.

D. DETERMINATION

16. The result of the process will be a determination by the Expert of the dispute.
17. The Expert will provide his determination in writing by email circulated to the legal representatives of the parties.
18. The Expert will include in the determination reasons for the determination in such form and to the extent which in the opinion of the Expert are sufficient and appropriate to explain the determination.
19. Within 7 days of delivery of the determination the Expert may make such correction he sees fit on his own initiative.
20. Within 7 days of receipt of the determination (or correction if any), a party may, by notice to the Expert and all other parties, request the Expert to correct any clerical, typographical or computational error in the determination. The Expert will consider any such request and make such correction as he sees fit within 7 days after receipt of the request.
21. For the purposes of this agreement, the effective date of the determination means:
 - (1) If there has been no correction to the determination, the date which is 14 days after the determination.
 - (2) If there has been a correction to the determination, the date which is 14 days after the date of the last correction.
22. The Expert's determination is final and binding on the parties.
23. The parties agree to implement the Expert's determination within 28 days of the effective date of the determination.
24. The parties will not challenge the determination in any legal proceedings or otherwise.
25. In the event that the determination has not been implemented by the parties within 28 days of the effective date of the determination, a party may enforce the determination by judicial proceedings. In any such proceedings, the Expert's determination shall be final and conclusive evidence of the terms of the determination.
26. Unless the parties agree otherwise, their costs of and incidental to the determination up to the effective date of the determination are not recoverable from each other. In other words, they are to pay their own costs in that regard.

E. DISPUTE DESCRIPTION

27. Zz INSERT AS APPROPRIATE

F. EXPERT'S FEES AND CHARGES

28. The Expert's fees and charges are based on an hourly rate of \$zz per hour. The hourly rate is charged for all work performed in relation to the negotiation of this agreement, the process and the determination. The hourly rate is charged for each hour and pro rata for each period of 10 minutes or part thereof. The hourly rate also applies to any research the Expert considers appropriate and time involved in waiting or travelling.
29. GST at 10% is added to the total of the Expert's fees and charges.
30. The parties are jointly and severally liable for the Expert's fees and charges.
31. Unless otherwise specified, as between the parties, they agree that they will pay the Expert's fees and charges in equal proportions such that, for example, where there are two parties, the proportion payable by each party is 50%.
32. The Expert will render a tax invoice for his fees to all the parties. Each party must pay its proportion of the fees and charges within 14 days of the date of the tax invoice. If not all parties pay their entire proportion, the Expert is entitled to recover any shortfall from the other parties.

G. EXECUTION SECTION

33. The parties and the Expert have signed this agreement as below:

PARTIES	
Party 1	By its solicitor zz of zzfirm
Party 2	By its solicitor zz of zzfirm
EXPERT	
J E Marshall SC	6/174 Phillip Street Sydney NSW 2000 +61 2 9221 4019 John.Marshall@sixthfloor.com.au