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| IN THE NATIONAL COURT OF JUSTICE AT .......,,,,,,,,,,,,,[[1]](#footnote-1) PAPUA NEW GUINEA | ) ) ) | **W/OS No. …… of 20..[[2]](#footnote-2)** |
|  |  | BETWEEN  **[Insert] [[3]](#footnote-3)**  First Plaintiff  AND:  **[Insert]**  Second Plaintiff  AND:  **[Insert]**  First Defendant  AND:  **[Insert]**  Second Defendant |
|  |  | **FORM 3** |

**MEDIATION ORDERS**

THE COURT ORDERS [[4]](#footnote-4) THAT:

1. Pursuant to Rule 4(2)(c) and Rule 5(2) of the *ADR Rules* this proceeding is ordered and referred to mediation by an accredited mediator.
2. The Parties shall attend mediation is for the purpose of making genuine and good faith attempts to:
   1. resolve all or any part of the proceeding; or
   2. failing settlement, identify and limit the real and meritorious issues in the proceeding that warrant judicial consideration and determination; and/or
   3. enable the parties to reach consensus on the conduct of litigation.
3. As provided by Rule 5 (5) of the ADR Rules, these orders for mediation shall not operate as a stay of the proceeding.
4. The Court orders that the mediation shall be conduct by **[Insert name of mediator] [[5]](#footnote-5)** (internal/external) [[6]](#footnote-6) who is an accredited mediator who shall conduct the mediation in co-mediation with **[Insert name of mediator] [[7]](#footnote-7)**,who is a provisionally accredited mediator.
5. In accordance with Rule 9(2) of the ADR Rules, the mediators shall inform the Court within seven (7) days, if they accept or decline this appointment. If a mediator declines appointment, the ADR Registrar shall seek a substitute be appointed by a Judge in chambers (R6 (7)).
6. The parties shall pay the Court mediation fee (ADR Rules Schedule 1) by **[Insert date] [[8]](#footnote-8)**. On or before that date the parties shall serve or fax a copy of the receipt to the ADR Registrar [[9]](#footnote-9). The parties shall give the receipt to the mediator at the Intake conference for inclusion in the ADR file.
7. The mediation conferences shall be held at Waigani, OR as mediator and parties agree OR as Court directs at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.[[10]](#footnote-10)
8. The parties (and if applicable, their lawyers (r10 (8))) within 2 working days of the date of this Order, shall notify the ADR Registrar, on the applicable ADR Registrar’s Form (Q), of current operative contact details including: Telephone number; Mobile number; Email and mailing address.
9. External mediators are entitled to charge a fee for their services (R7 (2), and the parties shall pay the fee at such rate and proportion as the parties and the mediator may agree by no later than **[Insert date] [[11]](#footnote-11)**  into the mediator’s nominated account.[[12]](#footnote-12)
10. If the parties fail to pay the mediator’s fees in accordance with clause 9 [[13]](#footnote-13) , the mediator shall report that failure to the Court in Form 1 of the ADR Rules and such failure shall constitute ‘bad faith’ (R 7 (4) + R10).
11. Provided clause 6 [[14]](#footnote-14) of these orders are met, the mediation will commence with an intake on **[Insert date] [[15]](#footnote-15)** followed by a mediation conference no later than **[Insert date] [[16]](#footnote-16).**
12. In accordance with Rule 9 (3) ADR Rules, the mediationprocess shall conclude within 2 months of the making of this Order, that date being **[Insert date] [[17]](#footnote-17)**. With a mediator’s certificate in Form 1 (R 10(5)) or Form 2 of the ADR Rules.
13. If the mediation does not commence or conclude in accordance with clauses 12 and 13 [[18]](#footnote-18) of these orders, the mediator shall inform the Assistant Registrar ADR of that fact within 5 days of the non-occurrence of the event.
14. On notification under clause 13 [[19]](#footnote-19) of these orders, the Assistant Registrar ADR shall within 5 days refer the matter to the Court for further directions or orders for the further conduct of the proceeding.
15. A failure to comply with all or any of these orders may be taken to mean lack of ‘good faith’(R10 (5)) against the defaulting party and may result in such orders and judgments as the Court (R10(7))considers appropriate which may include an order for costs inclusive of the mediation costs on an indemnity basis, in favour of the other party.
16. During the mediation process, the parties must be represented by a person with full capacity and authority to settle the proceeding and they must negotiate in ‘good faith’. Failing to have such a person present shall constitute ‘bad faith’ for the purposes of a Form 1 being submitted to the court by the accredited mediator (R10 (6)).
17. For the purpose of the mediation, the parties shall settle upon a succinct statement (**the Statement**), of the relevant facts clearly identifying which of the facts are in dispute and why, with a clear statement of issues presented in the proceeding for which purpose the:
18. plaintiff shall draft and forward to the Defendant a draft of the Statement by no later than .........201..;[[20]](#footnote-20)
19. defendant to respond no later than .....201..[[21]](#footnote-21)
20. parties shall meet in conference no later than ......201....,[[22]](#footnote-22) settle the Statement and have it immediately filed the next day.
21. In order that the mediation is conducted efficiently and effectively the mediator may:
22. if necessary, allow with the agreement of all of the parties, one of the parties or another person to attend the mediation by telephone or other means such as teleconference (R10 (4)); or
23. report to the Court any failure to comply with any or all of these orders for mediation or any conduct that is detrimental to a proper conduct and conclusion of the mediation and seek such orders and directions as considered appropriate (R10 (5) (6) + R14); or
24. terminate the mediation under Rule 58 of the ADR Rules.

1. Where all or some of the issues in the proceeding are resolved, the parties shall:
2. sign an agreement and/or;
3. sign a Deed of Settlement and or;
4. settle upon a draft Consent Order reflecting their agreement for the Court’s consideration and endorsement.
5. Where clause 19 [[23]](#footnote-23) of these orders applies, the parties shall within 7 days of the completion of the Mediation return to the Court and submit:
   1. the mediators certificate in Form 2; and
   2. a notice of Discontinuance; or
   3. Draft Consent Order.
6. The proceeding shall return to Court on [**insert the relevant date] [[24]](#footnote-24)**. where upon the Court may endorse any agreement of the parties either with or without modification as to the finalization of the proceeding or make such orders and issue such directions as are necessary toexpedite the matter to trial if not fully resolved by mediation.
   1. the Court may finalize the proceeding by endorsing any agreements of the parties either with or without modification OR
   2. if not fully resolved through the mediation process, make such orders and issue such directions as are necessary to expedite the matter to trial [[25]](#footnote-25)
7. Where some of all of the issues in the proceeding do not settle, the mediator shall submit Form 1 or Form 2 to the Court within 3 days of the conclusion of the mediation process.
8. Subject to the outcome of the mediation, the costs of today shall be costs in the cause.
9. The time for entry of these orders is abridged to the time of settlement by the Registrar which shall take place forthwith.

ORDERED: The day of 20…

ENTERED: The day of 20…

By the Court

..........................J.[[26]](#footnote-26)

1. Insert location of your Court. [↑](#footnote-ref-1)
2. Insert the correct WS, OS, or MP reference and the year. [↑](#footnote-ref-2)
3. Insert the names of the parties as appropriate [↑](#footnote-ref-3)
4. Orders can be BY CONSENT, if applicable [↑](#footnote-ref-4)
5. Insert the name of the mediator as agreed to and nominated by the parties, as provided R 6 (1).

   OR if the Court is of the view that the mediator the parties prefer is not well suit to undertake the mediation in the particular case,

   OR the parties have not reached any agreement, an external mediator the Court appoints from the ADR Registrar’s list of available mediators R6(3) or an internal mediator R6(4).

   The mediator to be appointed in the order of first available and the Court feels is well suited to conduct the mediation in that particular case.

   NOTE the ADR Registrar will have already circulated and the Court should have, a copy of the list of available mediators. [↑](#footnote-ref-5)
6. Strike out whichever is not applicable R6(2).Consult Policy on designation internal / external *– to be verified Judges Workshop. Rule 6 (4).* [↑](#footnote-ref-6)
7. Here insert the name of a provisionally accredited mediator from the list of available provisionally accredited mediators as published by the ADR Registrar which should also be with the Court already. If the co-mediator is going to be another fully accredited mediator the remainder of this order needs to by changed by deleting the word “provisionally” and add in its place the words “also an”. [↑](#footnote-ref-7)
8. Within 7 days for this Order. [↑](#footnote-ref-8)
9. Registrar’s fax number is (675) XXXXXXXXXXX [↑](#footnote-ref-9)
10. ADR Service policy is that conferences shall be held within PNG, as close as practical to the location of the dispute. Strike out or insert as applicable. [↑](#footnote-ref-10)
11. Insert the date as agree to by the parties and external mediator or a period not exceeding 7 days from the date of the appointment of the mediator (today). [↑](#footnote-ref-11)
12. NOTE Clauses 10 -11 refer to mediations with external mediators. If this mediation is internal, please delete these clauses. [↑](#footnote-ref-12)
13. Change clause numbers with reference to this order – which may have different numbering due to the circumstances of the order being made [↑](#footnote-ref-13)
14. Change clause numbers with reference to this order – which may have different numbering due to the circumstances of the order being made [↑](#footnote-ref-14)
15. This date should be at the earliest 7 days from the date of order and appointment of mediator and in any case, not exceed 4 weeks from the date of the order. [↑](#footnote-ref-15)
16. Insert a date within 5 days of the intake. [↑](#footnote-ref-16)
17. Insert the date when the mediation should conclude ( Rule 9 (3) – within 2 months) . If the matter is complex and good progress is being made, the mediator may apply for an extension in Form H. [↑](#footnote-ref-17)
18. Change clause numbers with reference to this order – which may have different numbering due to the circumstances of the order being made. [↑](#footnote-ref-18)
19. Change clause numbers with reference to this order – which may have different numbering due to the circumstances of the order being made [↑](#footnote-ref-19)
20. Insert a date that is not more than 7 days from the date of the order. [↑](#footnote-ref-20)
21. Insert a date that is not more than 7 days from the date fixed under subparagraph (a). [↑](#footnote-ref-21)
22. Insert a date that is not more than 3 days after the date under subparagraph (b). [↑](#footnote-ref-22)
23. Change clause numbers with reference to this order – which may have different numbering due to the circumstances of the order being made [↑](#footnote-ref-23)
24. Insert date that allows for the time period stipulated under term 8 of the orders and the 7 day period under orders 13 and 14 but not to exceed 10 working days from the concusion of mediation fixed under order 9. [↑](#footnote-ref-24)
25. ADR policy is that proceedings should be before the Court within 7 days of the signing of the mediators certificate. [↑](#footnote-ref-25)
26. Here insert the name of the Judge making the order or the name of the Registrar as the case might be. [↑](#footnote-ref-26)