



EASTERN FOOTBALL NETBALL LEAGUE
MEDIATION AGREEMENT



MEDIATION AGREEMENT



THIS MEDIATION AGREEMENT is made

BETWEEN

AND

(“the Parties”)

AND

(“the Mediator”)

RECITALS

- A. A dispute, as briefly set out in Item 1 of the Schedule, has arisen between the Parties (“**Dispute**”).
- B. Pursuant to Rule 7 of the Statement of Rules of the Eastern Football Netball League Inc. (“**EFNL**”), either or both Parties have requested the EFNL mediate the Dispute.
- C. Pursuant to its Statement of Rules, the EFNL has nominated the Mediator to conduct the mediation of the Dispute, and delegates the power of the EFNL to mediate the Dispute to the Mediator.
- D. The Mediator has agreed, on the terms and conditions of this Agreement, to assist the Parties in their attempt to resolve the Dispute.

IT IS AGREED

1 Nomination of Mediator

- 1.1 In accordance with the Statement of Rules and the By-Laws, either or both Parties have approached the EFNL to mediate the Dispute.
- 1.2 Acting pursuant to its Statement of Rules, the EFNL nominates the Mediator to conduct the mediation pursuant to the terms and conditions of this Agreement.
- 1.3 The Parties accept the nomination of the Mediator by the EFNL to mediate the Dispute in accordance with the terms and conditions of this Agreement.



2 Functions of the Mediator

- 2.1 The Mediator will be neutral and impartial.
- 2.2 The Mediator will assist the Parties to identify the issues between them and to explore options for and, if possible to achieve, the expeditious resolution of the Dispute by agreement between them.
- 2.3 The Mediator would not advise a Party, nor make any decision for, nor impose any solution on the Parties.
- 2.4 The Mediator will not give legal or professional advice to any of the Parties.
- 2.5 The Mediator will have sole control of the mediation at all times and may, at his absolute and unfettered discretion, throughout the Mediation determine when the Mediator may meet with the Parties, either together or separately.

3 Commitment to Mediation

- 3.1 The Parties agree to participate in the Mediation.
- 3.2 The Parties each agree to cooperate with the Mediator and with the other Parties with a commitment to negotiating towards a resolution of the Dispute.
- 3.3 The Parties acknowledge each other's right to be heard and agree to behave courteously and appropriately during the Mediation.
- 3.4 Each of the Parties will comply with all reasonable requests made by the Mediator that are intended to promote the efficient and expeditious resolution of the Dispute.

4 Conflict of Interest

- 4.1 Prior to the commencement of the Mediation, the Mediator must disclose to the EFNL and to the Parties to the best of the Mediator's knowledge and prior dealings with any of the Parties as well as any interest in the Dispute.
- 4.2 If during the Mediation the Mediator becomes aware of any circumstances that may adversely affect the Mediator's capacity to act neutrally and impartially, the Mediator must cease to act as mediator unless the situation permits the Mediator to inform the Parties of those circumstances and the Parties agree that the Mediator may continue to mediate the Dispute.

5 Preparation for Mediation

- 5.1 No later than four (4) days before the date set for Mediation, or at such other time as determined by the Mediator and made known to the Parties, each of the Parties must submit to the Mediator via the EFNL a short statement in writing that briefly outlines that Party's position.



- 5.2 No later than two (2) days before the date set for Mediation, or at such other time as determined by the Mediator and made known to the Parties, each of the Parties must submit to the Mediator via the EFNL those documents (or copies thereof) each of the Parties intends to rely upon during Mediation.

6 Location and Time of the Mediation

The Mediation will be conducted at the venue specified in Item 2 of the Schedule, at a date and time specified in Item 3 of the Schedule.

7 Confidentiality and Privilege

- 7.1 The Mediator and the Parties agree to keep confidential all information and documents concerning the Dispute which are disclosed during the Mediation. Any disclosures, exchanges and all aspects of any communication occurring within the Mediation shall be “without prejudice”.
- 7.2 Any information disclosed or furnished by a Party to the Mediator on a confidential basis will be kept confidential by the Mediator and will not be disclosed by the Mediator to any of the other Parties save with the consent of the Party who furnished such information.
- 7.3 Subject to clause 11, in any judicial proceedings, the following will always be kept confidential and will remain privileged, and the Parties and the Mediator will not disclose nor rely upon them nor issue nor cause to be issued any subpoena to give evidence or to produce documents concerning them:
- 7.3.1 any settlement proposal;
 - 7.3.2 the willingness of a Party to consider any such proposal;
 - 7.3.3 any statement, admission or concession made by any of the Parties;
 - 7.3.4 any statement or document made by the Mediator;
 - 7.3.5 any views expressed, suggestions made or exchanges passing (whether written or oral) between any of the Parties and the Mediator or between the Parties themselves; and
 - 7.3.6 any document brought into existence for the sole purpose of the Mediation.

8 Authority to Settle

- 8.1 If a Party is a natural person, he or she shall attend the Mediation or have present at the Mediation a representative with full authority to negotiate and settle the Dispute and to make an agreement binding upon that Party.



- 8.2 If a Party is not a natural person (such as an incorporated association or a corporation), that Party shall be represented at the Mediation by an officer or other person who has full authority to negotiate and make a binding settlement on behalf of that Party.

9 Representation at the Mediation

- 9.1 At the Mediation, each Party may have one or more other persons, excluding legally qualified persons, to assist and advise the Party.
- 9.2 Such other person must, prior to becoming involved in the Mediation, sign a third-party confidentiality agreement in the form annexed to this Agreement.

10 Settlement Agreement

If the Dispute is settled during the Mediation, the terms of the settlement shall be reduced to writing and signed by the Parties, or their authorised representatives, and the Mediator prior to the end of the Mediation (“**Settlement Agreement**”).

11 Enforcement of Settlement Agreement

- 11.1 Any Party will be at liberty to enforce the terms of the Settlement Agreement by judicial proceedings.
- 11.2 Any Party will be at liberty in such enforcement proceedings to adduce evidence of and incidental to the Settlement Agreement including evidence from the Mediator and any other person involved in the Mediation.
- 11.3 The Mediator will not accept appointment as an adviser to or advocate on behalf of any of the Parties in any proceedings in relation to the enforcement of a Settlement Agreement or in relation to the Dispute.
- 11.4 The Parties will not do anything that may cause the Mediator to breach the Mediator’s obligations under clause 11.3.

12 Exclusion of Liability; Indemnity

- 12.1 To the fullest extent permitted by law, neither the EFNL nor the Mediator will be liable to any Party for any act or omission in the performance by the Mediator of the Mediator’s obligations under this Agreement unless the act or omission is fraudulent.
- 12.2 To the extent that such liability cannot be excluded under law, the EFNL’s liability to each of the Parties shall be limited, at the option of the EFNL, to either of the following:
- 12.2.1 In the case of the supply of services:
- (a) supplying the services again, or
 - (b) the payment of the cost of having the services supplied again.



12.2.2 In the case of the supply of goods, any one or more of the following:

- (a) the replacement of the goods or the supply of equivalent goods; or
- (b) the repair of the goods; or
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

12.3 Each Party, together and separately, indemnifies and keeps the Mediator and the EFNL indemnified against all claims made by that Party or anyone claiming under or through that Party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance by the Mediator of the Mediator's obligations under this Agreement, unless the act or omission fraudulent.

13 Mediation Costs and Expenses

13.1 The costs and expenses of the Mediation are set out in Item 4 of the Schedule ("**Costs**").

13.2 Irrespective of the outcome of the Mediation, each Party agrees to pay one half of the Costs.

13.3 Each Party will bear its own costs and expenses of the Mediation.

13.4 The Parties agree that none of the Costs will be costs recoverable as part of the party/party costs of any judicial proceedings relating to the Dispute and/or the enforcement of the Settlement Agreement.

14 Termination of the Mediation

14.1 The Mediator may terminate the Mediator's involvement in the Mediation if, after consultation with the Parties, the Mediator draws the conclusion that the Mediator is unable to assist the Parties to achieve resolution of the Dispute. Upon the termination of the Mediator's involvement in the Mediation, this Mediation shall be terminated with immediate effect.

14.2 The execution of a Settlement Agreement by both Parties and the Mediator pursuant to clause 10 above shall be deemed to terminate this Mediation Agreement with immediate effect.

14.3 Any Party may terminate the Mediation at any time, after due and proper consultation with the Mediator.

14.4 The Mediator shall report the outcome of the Mediation to the Chief Executive Officer of the EFNL, but shall not except with the express written permission of each of the Parties, disclose any terms of Settlement Agreement.

15 Governing Law and Jurisdiction

14.5 The terms of this Agreement shall be construed in accordance with the law of Victoria and Australia, and are subject to the provisions of any legislation that may be applicable to or govern the mediation, and in the event of any inconsistency, the provisions of the legislation will prevail.

14.6 The Parties and the Mediator on behalf of the EFNL hereby irrevocably submit to the exclusive jurisdiction of the Courts of the State of Victoria (including the Victorian registry of the Federal Court of Australia) and all courts competent to hear appeals from those Courts.

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of)
[])
by its duly authorised representative in the)
presence of:)

.....
Signature of witness

.....
Signature of authorised representative

.....
Name of witness (block letters)
letters)

.....
Name of authorised representative (block
letters)

SIGNED by [])
in the presence of:)

.....
Signature of []

.....
Signature of witness

.....
Name of witness (block letters)

SIGNED by [])
in the presence of:)

.....
Signature of []

.....
Signature of witness

.....
Name of witness (block letters)



SCHEDULE

ITEM 1: Description of Dispute

[]

ITEM 2: Location of the Mediation

The Mediation shall be conducted at EFNL House, 256 Scoresby Road, Boronia, Victoria.

ITEM 3: Time of the Mediation

The Mediation shall commence at [] on [], 20[].

ITEM 4: Costs of the Mediation

The costs of the mediation are as follows:



CONFIDENTIALITY UNDERTAKING

[]

AND

[]

(“the Parties”)

AND

[]

(“the Mediator”)

have entered into a Mediation Agreement dated 20 in accordance with which the Mediator will conduct a Mediation.

1. The undersigned acknowledge by their signatures that they attend the mediation based on their understanding and agreement to the terms of clauses 2 and 3, below.
2. Each of the undersigned undertakes to the Parties and to the Mediator:
 - 2.1 to keep confidential to themselves all information disclosed during the Mediation including the preliminary steps in the Mediation (“**confidential information**”);
 - 2.2 not to act contrary to the undertaking in clause 2.1 unless compelled to do so by law or with the consent of the Party who disclosed the confidential information;
 - 2.3 not to use confidential information for a purpose other than the Mediation.
3. Each of the undersigned undertakes to the Parties and the Mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or produce documents in any judicial proceeding between the Parties:
 - 3.1 any settlement proposal;
 - 3.2 the willingness of a Party to consider any such proposal;
 - 3.3 any statement, admission or concession made by a Party;
 - 3.4 any statement or document made by the Mediator;
 - 3.5 any views expressed, suggestions made or exchanges passing (whether written or oral) between any of the Parties and the Mediator or between the Parties themselves; and
 - 3.6 any document brought into existence for the sole purpose of the Mediation.

SIGNED by _____)
.....

...

in the presence of: _____) Signature of

.....
Signature of witness

.....
Name of witness (block letters)

SIGNED by _____)
in the presence of: _____) Signature of

.....
Signature of witness

.....
Name of witness (block letters)

SIGNED by _____)
in the presence of: _____) Signature of

.....
Signature of witness

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Name of witness (block letters)