

EXPERT DECISION (BINDING): Nutshell & Agreement

There are times where the parties cannot resolve the issues themselves and needs someone who is an expert in the area of dispute to hear and decide the matter.

About the Expert and the Decision Process

The expert is impartial and has recognised skill or knowledge in the subject matter of the dispute. S/he is selected by the Resolution Facilitator with input from the parties.

Expert Decision is a fast and cost-effective way of resolving mostly technical disputes. It is usually quicker than court and still provides a binding decisions The Expert Decision is binding by virtue of a contract between the parties in dispute agreeing to be bound.

The process

The process is the domain of the expert and will vary. Usually, before the Expert Decision the parties submit documents in support of their position. This includes an outline of the points of contention and any documents in support. There is a meeting and the expert asks questions of the parties before making his/her decision. The expert relies on the parties' submission as well as his/her own expertise in deciding the matters in dispute.

Parties can represent themselves and also bring a friend, lawyer, or other support person. The Expert Decision is binding on the parties.

Expert Decision - agreement

It is important that everyone knows what to expect. This will allow parties to adequately prepare, to know their rights and maximise the chances of everyone feeling satisfied with the process.

The agreement sets out the legal rights in plain English - these are important to understand. The Resolution Facilitator is also available to explain the process and the terms of the agreement.



EXPERT DECISION (BINDING): Agreement

Between: Name:

Address:

Name:

Address:

(collectively “the Participants”)

And

Name:

Address:

(the “Expert”)

And

Name:

Address:

(the “Resolution Facilitator”)

Definitions:

Adviser means a legal adviser or support person for a Participant.

The Dispute means the issue between the participants as described in Annexure A.

The Participants means the parties to the Expert Decision.



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Background

- A The Resolution Facilitator has referred the Dispute to the Expert for determination.
- B In order to facilitate determination of the Dispute by the Expert, the Participants wish to enter into this agreement with the Expert and the Resolution Facilitator.

The Expert Decision

1. “The Expert Decision” shall comprise all steps taken to hear and determine the Dispute by the Expert, whether prior or subsequent to the execution of this agreement.

Appointment and functions of the Expert

2. With the Participants’ consent, the Resolution Facilitator appoints the Expert, and the Expert accepts the appointment, to hear and determine the Dispute in accordance with the terms of this agreement.
3. The Expert will determine the Dispute and issue his/her decision to the Participants within [insert time frame]
4. The Expert confirms that s/he has no interest in the Dispute, nor any prior dealings with any of the Participants in relation to the Dispute.
5. If in the course of the Expert Decision the Expert becomes aware of any circumstances that might reasonably be considered to affect the Expert’s capacity to act impartially, the Expert will, to the extent that the Expert may properly do so, immediately inform the Participants of those circumstances. The Participants must then decide whether they wish the Expert to continue to act as the Expert under this agreement or whether they wish to terminate the agreement.
6. If, after consultation with the Participants or Advisers, the Expert forms the view that s/he will be unable to assist the Participants to achieve resolution of the Dispute s/he may terminate the appointment by giving written notice to the Participants of that termination.



Co-operation, Costs and Expert's Fees

7. The Participants agree to participate in the Expert Decision and each Participant and Adviser will comply with reasonable requests made by the Expert.
8. Each Participant will meet its own costs of and in connection with the Expert Decision.
9. Irrespective of the outcome of the Expert Decision, the Expert's fees and disbursements will be paid as specified in the annexure.

Insurance

- 10 The Expert will ensure s/he has appropriate insurance and the professional accreditation required to make the decision.

Conduct of the Expert Decision

11. The Expert Decision, including all preliminary steps, shall be conducted in such manner as the Expert considers appropriate, and the Expert may suggest:
 - (i) the holding of preliminary conferences;
 - (ii) the exchange of written outlines of the views of the Parties on the issues raised by the Dispute;
 - (iii) the exchange of information or reports.

The Decision

12. The Expert's decision on the issues in Dispute will be in writing, signed and dated by the Expert and will contain a statement of reasons for the decision in such a form as the Expert considers appropriate.
- 13 Unless otherwise agreed by the Participants, the Expert's decision is final and binding on the Participants.



Confidentiality

14. The Resolution Facilitator, Participants, Advisers and the Expert will not, unless required by law to do so, disclose to any person not involved in the Expert Decision, nor use, any confidential information furnished during the Expert Decision unless:
 - (i) such disclosure is to obtain professional advice, or
 - (ii) is to a person who has been named and all of the other Participants have consented, and
 - (iii) the person to whom the disclosure is made is advised that the confidential information is confidential.

Release and liability

15. Each Participant releases and indemnifies the Expert and the Resolution Facilitator in relation to any loss, damage or liability that the Expert or the Resolution Facilitator suffers or incurs, or would, but for this release and indemnity, suffer or incur, as a consequence of any act or omission done in good faith in connection with the Expert Decision.
16. The Expert will not be liable to the Participants for any act or omission by the Expert in the performance or purported performance of the Expert's obligations under this agreement unless the act or omission is fraudulent.
17. No statements or comments, whether written or oral, made or used by the Participants or the Advisers or the Expert within the Expert Decision can be relied on to found or maintain any action for defamation, libel, slander or any related complaints, and this document may be pleaded as a bar to any such action.



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Signed By:

.....

Print name:

.....

Date:

Signed By:

.....

Print name:

.....

Date:

Signed by Expert:

.....

Print name:

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Signed by Resolution Facilitator:

.....

Print name:

.....



ANNEXURE

1. **The Dispute** (please provide a short description) [*EG: ownership of “dog eat Dog”, license category etc.*]

2. **Expert’s Fees and Disbursements:**

Expert fees:

Estimated disbursements:

P aid by: (note proportion of payment by each Participant☺)

3. **The Resolution Facilitator**

Name: Shirli Kirschner

Address: PO Box Paddington NSW 2021

Fee:

Current as at 28 May 2015 BHF

DATE	COMMENT	
Current as at 28052014	BHF	

