

**NORTHERN FOOTBALL
NETBALL LEAGUE
INCORPORATED**



**SCHEDULE 4:
CONCILIATION AGREEMENT**

**Adopted
March 2014**

NORTHERN FOOTBALL NETBALL LEAGUE INCORPORATED
CONCILIATION AGREEMENT

THIS CONCILIATION AGREEMENT IS MADE BETWEEN:

AND

(“the Parties”)

AND

(“the Conciliator”)

RECITALS

- A. A dispute, as briefly set out in Item 1 of the Schedule, has arisen between the Parties (“Dispute”).
- B. Pursuant to the Statement of Rules and/or By-Laws of the Northern Football Netball League Inc. (“NFNL”), either or both of the Parties have requested the NFNL conciliate the Dispute.
- C. Pursuant to its Statement of Rules and/or By-Laws, the NFNL has nominated the Conciliator to conduct the Conciliation of the Dispute, and delegates the power of the NFNL to conciliate the Dispute to the Conciliator.
- D. The Conciliator 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 Conciliator**

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

2. **Functions of the Conciliator**

- 2.1 The Conciliator will be neutral and impartial.
- 2.2 The Conciliator 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 Conciliator would not advise a Party, nor make any decision for, nor impose any solution on the Parties.
- 2.4 The Conciliator will not give legal or professional advice to any of the Parties.

2.5 The Conciliator will have sole control of the Conciliation at all times and may, at his absolute and unfettered discretion, throughout the Conciliation determine when the Conciliator may meet with the Parties, either together or separately.

3. Commitment to Conciliation

3.1 The Parties agree to participate in the Conciliation.

3.2 The Parties each agree to cooperate with the Conciliator 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 Conciliation.

3.4 Each of the Parties will comply with all reasonable requests made by the Conciliator 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 Conciliation, the Conciliator must disclose to the NFL and to the Parties to the best of the Conciliator's knowledge and prior dealings with any of the Parties as well as any interest in the Dispute.

4.2 If during the course of the Conciliation the Conciliator becomes aware of any circumstances that may adversely affect the Conciliator's capacity to act neutrally and impartially, the Conciliator must cease to act as Conciliator unless the situation permits the Conciliator to inform the Parties of those circumstances and the Parties agree that the Conciliator may continue to conciliate the Dispute.

5. Preparation for Conciliation

5.1 No later than four (4) days before the date set for Conciliation, or at such other time as determined by the Conciliator and made known to the Parties, each of the Parties must submit to the Conciliator via the NFL 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 Conciliation, or at such other time as determined by the Conciliator and made known to the Parties, each of the Parties must submit to the Conciliator via the NFL those documents (or copies thereof) each of the Parties intends to rely upon during Conciliation.

6. Location and Time of the Conciliation

The Conciliation 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 Conciliator and the Parties agree to keep confidential all information and documents concerning the Dispute which are disclosed during the course of the Conciliation. Any disclosures, exchanges and all aspects of any communication occurring within the Conciliation shall be "without prejudice".

7.2 Any information disclosed or furnished by a Party to the Conciliator on a confidential basis will be kept confidential by the Conciliator and will not be disclosed by the Conciliator 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 at all times be kept confidential and will remain privileged, and the Parties and the Conciliator 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:

- i. Any settlement proposal;
- ii. The willingness of a Party to consider any such proposal;
- iii. Any statement, admission or concession made by any of the Parties;
- iv. Any statement or document made by the Conciliator;
- v. Any views expressed, suggestions made or exchanges passing (whether written or oral) between any of the Parties and the Conciliator or between the Parties themselves; and
- vi. Any document brought into existence for the sole purpose of the Conciliation.

8. Authority to Settle

- 8.1 If a Party is a natural person, he or she shall attend the Conciliation or have present at the Conciliation 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 Conciliation 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 Conciliation

- 9.1 At the Conciliation, 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 Conciliation, sign a third party confidentiality agreement in the form annexed to this Agreement.

10. Settlement Agreement

In the event that the Dispute is settled during the Conciliation, the terms of the settlement shall be reduced to writing and signed by the Parties, or their authorised representatives, and the Conciliator prior to the end of the Conciliation (“**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 Conciliator and any other person involved in the Conciliation.
- 11.3 The Conciliator 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 Conciliator to breach the Conciliator’s obligations under clause 11.3.

12. Exclusion of Liability; Indemnity

- 12.1 To the fullest extent permitted by law, neither the NFNL nor the Conciliator will be liable to any Party for any act or omission in the performance by the Conciliator of the Conciliator'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 NFNL's liability to each of the Parties shall be limited, at the option of the NFNL, to either of the following:
 - 12.2.1 In the case of the supply of services:
 - i. Supplying the services again; or
 - ii. 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:
 - i. The replacement of the goods or the supply of equivalent goods; or
 - ii. The repair of the goods; or
 - iii. The payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iv. The payment of the cost of having the goods repaired.
- 12.3 Each Party, together and separately, indemnifies and keeps the Conciliator and the NFNL indemnified against any and 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 Conciliator in the performance or purported performance by the Conciliator of the Conciliator's obligations under this Agreement, unless the act or omission fraudulent.

13. Conciliation Costs and Expenses

- 13.1 The costs and expenses of the Conciliation are set out in Item 4 of the Schedule ("**Costs**").
- 13.2 Irrespective of the outcome of the Conciliation, each Party agrees to pay one half of the Costs.
- 13.3 Each Party will bear its own costs and expenses of the Conciliation.
- 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 Conciliation

- 14.1 The Conciliator may terminate the Conciliator's involvement in the Conciliation if, after consultation with the Parties, the Conciliator draws the conclusion that the Conciliator is unable to assist the Parties to achieve resolution of the Dispute. Upon the termination of the Conciliator's involvement in the Conciliation, this Conciliation shall be terminated with immediate effect.
- 14.2 The execution of a Settlement Agreement by both Parties and the Conciliator pursuant to clause 10 above shall be deemed to terminate this Conciliation Agreement with immediate effect.
- 14.3 Any Party may terminate the Conciliation at any time, after due and proper consultation with the Conciliator.
- 14.4 The Conciliator shall report the outcome of the Conciliation to the Chief Executive Officer of the NFNL, 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

15.1 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 Conciliation, and in the event of any inconsistency, the provisions of the legislation will prevail.

15.2 The Parties and the Conciliator on behalf of the NFNL 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)

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

SIGNED by
[]
in the presence of:

.....
Signature of witness

.....
Signature of []

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

SIGNED by
[]
in the presence of:

.....
Signature of witness

.....
Signature of []

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

SCHEDULE

ITEM 1: Description of Dispute

ITEM 2: Location of the Conciliation

The Conciliation shall be conducted at [insert address]:

ITEM 3: Time of the Conciliation

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

ITEM 4: Costs of the Conciliation

The costs of the Conciliation are as follows:

CONFIDENTIALITY UNDERTAKING

AND _____

(“the Parties”)

AND _____

(“the Conciliator”)

have entered into a Conciliation Agreement dated [], 20[] in accordance with which the Conciliator will conduct a Conciliation.

- 1. The undersigned acknowledge by their signatures that they attend the Conciliation on the basis of 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 Conciliator:
 - i. To keep confidential to themselves all information disclosed during the Conciliation including the preliminary steps in the Conciliation (“**confidential information**”);
 - ii. 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;
 - iii. Not to use confidential information for a purpose other than the Conciliation.
- 3. Each of the undersigned undertakes to the Parties and the Conciliator 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:
 - i. Any settlement proposal;
 - ii. The willingness of a Party to consider any such proposal;
 - iii. Any statement, admission or concession made by a Party;
 - iv. Any statement or document made by the Conciliator;
 - v. Any views expressed, suggestions made or exchanges passing (whether written or oral) between any of the Parties and the Conciliator or between the Parties themselves;
 - vi. Any document brought into existence for the sole purpose of the Conciliation.

