



## MEDIATION AGREEMENT

**BETWEEN:** (Party)  
C/-

**AND:** (Party)  
C/-

**AND:** (Mediator)  
Brisbane Mediations  
Level 8, Watkins Medical Centre  
225 Wickham Terrace, Brisbane Q 4000

Brisbane  
Mediations

Brisbane  
Family  
Mediations

THIS AGREEMENT is made on the

2011.

BETWEEN: (Party)  
Of

AND: (Party)  
Of

(each a "Party" and together "the Parties")

AND:  
Of  
(Legal representative for )

AND:  
Of  
(Legal representative for )

AND:  
Of Brisbane Mediations  
Level 8 225 Wickham Tce  
Brisbane, 4000

(the "Mediator")

## RECITALS

- A. Disputes have arisen between the Parties.
- B. The Parties have requested the Mediator, and the Mediator has agreed, on the terms and conditions of this agreement to assist the parties to resolve, if possible, the Disputes.

## AGREEMENT

### Appointment of the Mediator

- 1. The Parties appoint the Mediator, and the Mediator accepts appointment, to mediate the Disputes (“the Mediation”) in accordance with the terms of this agreement.

### Payment of Fees

- 2. Total fees (not including GST) payable to the Mediators are charged on the following basis:-
 

Intake Interview (1 hour)	-	\$350.00
Mediation (minimum of 4 hours payable)	-	\$1400.00
Additional Time	-	\$350.00 per hour
- 3. The parties shall share equally payment of fees unless otherwise agreed to between the parties and advised in writing to Brisbane Mediations.
- 4. Fees for the Intake Interview are payable no later than one (1) business day before the scheduled appointment and are forfeited if the appointment is cancelled within 24 hours of the session – unless rescheduled.
- 5. Fees for the Mediation are payable two (2) business days in advance and are forfeited if cancelled within 48 hours of the scheduled time – unless rescheduled.
- 6. If the Parties have not agreed on a resolution of the Disputes by the end of the time allocated for the Mediation conference and wish to continue the Mediation

they will share equally and will be jointly and severally liable to the Mediator for the Mediator's fees for the balance of the Mediation.

### **Functions of the Mediators**

7. The Mediator will assist the Parties to explore options for and, if possible, achieve the expeditious resolution of the Disputes by agreement between them.
8. The Mediator makes no representation that any such agreement between the Parties will resemble or equate any result which might be achieved by negotiation or a contested trial of the Disputes or any part of them.
9. The Mediator will not make decisions for a Party or impose a solution on the Parties.
10. The Mediator will not obtain from any independent person advice or an opinion as to any aspect of the Disputes, unless the parties agree in writing and then only from such person or persons agreed by the parties.

### **Conflicts of Interest**

11. The Mediator acknowledges that he/she has disclosed to the Parties to the best of his/her knowledge any prior dealings he/she has had with either of them and any interest he/she has in the Disputes.
12. If in the course of the Mediation the Mediator or either of them become aware of any circumstances that might reasonably be considered to affect the Mediators' capacity to act impartially then the Mediator will immediately inform the parties of those circumstances. The Parties will then confer and if agreed continue with the Mediation before the Mediator.

### **Co-operation**

13. The Parties must co-operate with the Mediator and each other during the Mediation and follow all reasonable guidelines.

14. Each party must use his or her best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Disputes. If either party does not do so, then the Mediator may terminate the Mediation.

### **Authority and Representation**

15. In the absence of consent by the other Parties and the Mediator, if a Party is a natural person, that Party must attend the Mediation conference. If a Party is not a natural person or is not present in person, it must be represented at the Mediation conference by a person with full knowledge of the relevant issues and authority to make agreements binding on it in settling the Disputes.
16. Without limiting the responsibility of the parties under Clause 15, if any party has any limitation on their authority to settle, this must be disclosed to all other parties before the commencement of the Mediation Conference.
17. Each Party may have a solicitor or counsel present to assist actively and advise the Party in the Mediation and to perform such role in the Mediation as the Party requires.

### **Conduct of the Mediation**

18. The Mediation, including all preliminary steps shall be conducted in such manner as the Mediator considers appropriate having due regard to the nature and circumstances of the Disputes, the agreed goal of an efficient and expeditious resolution of the Disputes and the view of each Party as to the conduct of the Mediation.
19. Without limiting the Mediator's powers under Clause 13 where appropriate and with the agreement of the Parties, the Mediator may give directions as to:
  - 19.1 the exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint expert's report with a view to identifying areas of agreement, narrowing the area of disagreement, and clarifying briefly the reasons for disagreement;

- 19.2 the exchange of brief written outlines of the issues raised by the Disputes;
- 19.3 providing the Mediator prior to the Mediation with any such reports and outlines; and
- 19.4 preliminary conferences prior to the Mediation conference.

### **Communications between the Mediator and a Party**

- 20. The Mediator may meet as frequently as he/she deems appropriate with the Parties together or with a Party alone.
- 21. The Mediator may communicate with a Party or the Parties orally and/or in writing.
- 22. Subject to Clause 23, any document relied upon by a Party and provided to the Mediator will be promptly provided by the Party to the other Party.
- 23. Information, whether oral or written, disclosed to the Mediator by a Party in the absence of the other Party will be confidential, but may be disclosed by the Mediator to the other Party with the permission of the first Party.

### **Confidential Information**

- 24. In the event the dispute settles at mediation:  
The Parties and the Mediator agree in relation to all confidential information disclosed to them during the mediation, including the preliminary steps:
  - 24.1 to keep that information confidential;
  - 24.2 not to disclose that information except to a Party or a representative of that Party participating in the Mediation, or if compelled by Law to do so; and
  - 24.3 not to use that information for a purpose other than the Mediation.

**Privilege**

25. The Parties and the Mediator agree that, subject to Clause 32, all documents or statements produced, used or made in the Mediation, not otherwise available or known or subject to other obligations of discovery, will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the Disputes and neither shall the Mediator be subpoenaed.

**Subsequent Proceedings**

26. The Mediator will not accept appointment as an arbitrator in or act as a solicitor or barrister or provide advice to a Party to any arbitral or judicial proceeding relating to the Disputes or any of them.

**Termination**

27. A Party may terminate the Mediation immediately by giving written notice to each other Party and to the Mediator.
28. If, after consultation with the Parties, the Mediator forms the view that they will be unable to assist the parties to achieve resolution of the Disputes or that the continuation of the mediation process would harm or prejudice some or all of the Parties, he/she may immediately terminate his/her engagement as Mediator by giving written notice to the Parties of that termination.
29. The Mediation will be terminated automatically upon execution of a settlement agreement in respect of the Disputes.
30. Termination of the Mediation does not terminate the operation of Clauses 23 to 25 and Clauses 32 to 34 inclusive.

**Settlement**

31. If settlement is reached at the Mediation conference, the terms of the settlement shall be written down and signed by both Parties or their representatives and the Mediator before any of the participants leave the Mediation conference. Any consensus at the mediation will not be an enforceable agreement until such time as it has been reduced to writing and signed by all the parties to the agreement.

### **Enforcement**

32. In the event that one or more of the Disputes is or are settled as the case may be, either Party will be at liberty:

- 32.1 to enforce the terms of the settlement agreement by judicial proceedings; and

- 32.2 in such proceedings to adduce evidence of and incidental to the settlement agreement but limited to that purpose if otherwise privileged by reason of Clause 25.

### **Exclusion of Liability and Indemnity**

33. The Mediator will not be liable to a Party, except in the case of fraud by the Mediator, for any act or omission by him/her in the performance or purported performance of his/her obligation under this agreement.
34. The Parties jointly and severally indemnify the Mediator against all claims, except in the case of fraud by the Mediator, arising out of or in any way connected with any act or omission by the Mediator in the performance or purported performance of his/her obligations under this agreement.

THE PARTIES AND THE MEDIATOR have executed this as an agreement.

SIGNED By

.....  
**PARTY**

SIGNED By

.....  
**PARTY**

SIGNED By

.....  
**SOLICITOR**  
Legal representative for

SIGNED By

.....  
**SOLICITOR**  
Legal representative for

SIGNED By

.....  
**MEDIATOR**  
Mediator