

MEDIATION AGREEMENT

The Law Society of South Australia undertakes no responsibility to any party regarding the use of this agreement. Parties intending to mediate should obtain their own advice as to whether mediation or the use of this agreement is appropriate.

THIS AGREEMENT is made on the day of 20..

BETWEEN the following disputing parties ("the parties")

1. name
address
.....

2. name
address
.....

3. name
address
.....

4. name
address
.....

AND the mediator/s ("the mediator")

name of mediator
address
.....

name of mediator
address
.....

MEDIATION PROCESS

The "mediation" process referred to in this agreement is a voluntary process by which the parties, with the assistance of the mediator, systematically isolate issues in dispute, develop options for the resolution of those issues, explore the usefulness of those options and consider alternatives with the aim of reaching an agreement that accommodates the interests and needs of the parties and has the effect of resolving the dispute or agreeing on some of the issues.

1. APPOINTMENT OF MEDIATOR

The parties appoint the mediator(s) to mediate, in accordance with the terms of this agreement, the dispute between them. The dispute is briefly described in Schedule 1 to this agreement ("the dispute"). The mediator accepts that appointment.

2. ROLE OF THE MEDIATOR

- 2.1 The mediator will be neutral and impartial.
- 2.2 The mediator will not make decisions for a party or impose a solution on the parties.
- 2.3 The parties will not be bound by any comments, suggestions or statements made by the mediator.
- 2.4 The mediator will not give legal or professional advice to any party.
- 2.5 The mediator will be in control of the mediation process and may, throughout the mediation, determine when the mediator may meet with the parties together or separately.

3. COMMITMENT TO MEDIATION

- 3.1 The parties each agree to co-operate with the mediator and the other parties in the mediation with a commitment to negotiate towards achieving a resolution of the dispute.
- 3.2 The parties acknowledge each other's right to be heard and agree to behave appropriately during the mediation.

4. CONFLICT OF INTEREST

- 4.1 The mediator must prior to the commencement of the mediation disclose to the parties to the best of the mediator's knowledge any

prior dealings with any of the parties as well as any interest in the dispute.

- 4.2 If in the course of a mediation the mediator becomes aware of any circumstances that affect the mediator's capacity to act 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.

5. CONFIDENTIALITY

- 5.1 The mediator and the parties agree to keep confidential all information and documents concerning the dispute which are disclosed during the course of the mediation. Any disclosures, exchanges and all aspects of any communication occurring within the mediation shall be "without prejudice".

- 5.2 The parties and the mediator agree that, subject to clause 12 hereof, the following will be privileged and will not be disclosed or be the subject of a subpoena to give evidence or produce documents in any proceedings in respect of the dispute:

5.2.1 Any settlement proposal made in the course of attempting to resolve the dispute, whether such proposal be made by a party or the mediator.

5.2.2 The willingness of a party to consider or accept any such settlement proposal.

5.2.3 Any admission or concession made within the mediation by a party.

5.2.4 Any views expressed, suggestions made or exchanges passing (oral or documentary) between any of the parties and the mediator or between the parties themselves.

5.2.5 Documents brought into existence for the sole purpose of the mediation.

6. COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES.

Any information disclosed by a party or its representative to the mediator in private is to be treated as confidential by the mediator unless the party on whose behalf the disclosure is made states otherwise.

7. AUTHORITY TO SETTLE

7.1 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 on the party.

7.2 A party who is not a natural person, such as a corporation, 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.

8. REPRESENTATION AT MEDIATION

At the mediation, every party may have one or more other persons, including legally qualified persons, to assist and advise however such person shall before becoming involved in the mediation sign a third party confidentiality agreement in the form annexed hereto.

9. THIRD PARTIES WHO DO NOT REPRESENT PARTIES

Third parties, who are not acting as representatives of a party, shall only be entitled to attend and be part of the mediation with the consent of all other parties and only after signing a third party confidentiality agreement in the form annexed hereto.

10. PRELIMINARY CONFERENCE

The parties and their representatives will, prior to the mediation, participate in a preliminary conference convened by the mediator to discuss and agree upon:

10.1 The suitability of the matter for mediation

10.2 The collation and presentation of material and documentation for use in the mediation.

10.3 The setting of a time, date and venue for the mediation.

10.4 Any other planning or administrative arrangements necessary to enable the mediation to take place.

11. SETTLEMENT OF THE DISPUTE

In the event that the dispute is settled, the terms of settlement shall be written down and signed by the parties and the mediator prior to the end of the mediation.

12. ENFORCEMENT OF SETTLEMENT AGREEMENT

Any party will be at liberty to enforce the terms of the settlement agreement by judicial proceedings and for the purposes thereof, any party may call evidence of the settlement agreement.

13. TERMINATION OF MEDIATION

13.1 The mediator may terminate the mediator's involvement in the mediation if, after consultation with the parties, the mediator feels unable to assist the parties to achieve resolution of the dispute.

13.2 Any party may terminate the mediation at any time after consultation with the mediator.

14. MEDIATION COSTS AND EXPENSES

14.1 The mediator's costs are those described in Schedule 2, item 2.1.

14.2 Any other costs associated with the mediation are those described in Schedule 2, item 2.2.

14.3 Unless otherwise stipulated in item 2.3 of Schedule 2, the parties agree that they will each be liable to pay half of the mediator's costs and other expenses set out in Schedule 2.

14.4 Unless otherwise agreed and stipulated in item 2.3 of Schedule 2, each party will pay its own costs and expenses of the mediation including its own legal representation.

14.5 Unless otherwise agreed and stipulated in item 2.3 of Schedule 2, the parties agree that none of the mediator's costs or other expenses stipulated in item 2.1 of Schedule 2 hereto will be costs recoverable as part of the party/party costs of any legal proceedings relating to the dispute.

15. EXCLUSION OF LIABILITY AND INDEMNITY

15.1 The mediator will not be liable to any party for any act or omission in the performance of the mediator's obligations under this agreement unless the act or omission is fraudulent.

15.2 The parties together and separately indemnify the mediator against any claim for any act or omission in the performance of the mediator's obligations under this agreement unless the act or omission is fraudulent.

SCHEDULE 1

DESCRIPTION OF THE DISPUTE

The dispute is the subject of proceedings number of in the Court.

SCHEDULE 2

COSTS OF THE MEDIATION

2.1 Mediator's fees and expenses

Hourly rate: \$

Daily rate: \$

Maximum fee (if applicable): \$

2.2 Hire of premises: \$

Location

2.3 Other expenses:

Further or alternative conditions relating to costs and expenses

The parties and the mediator have signed this agreement to mediate as follows:

DATED the day of 20..

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Name of party/representative. Please print.

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Signature of party/representative

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Name of party/representative. Please print.

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Signature of party/representative

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Name of party/representative. Please print.

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Signature of party/representative

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Name of party/representative. Please print.

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Signature of party/representative

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Name of mediator. Please print.

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Signature of mediator

