

## Mediation Agreement

This **Agreement** is made on the **Agreement Date** between the **Parties** specified in **Schedule 1**.

### RECITALS

- A. **Mediator** has the skills and resources to mediate the **Dispute**.
- B. **Disputing Parties** require the assistance of **Mediator** to resolve the **Dispute**
- C. **Disputing Parties** and **Mediator** agree as follows.

### Operative Part

#### 1. Definitions

1.1 In this **Agreement**, unless inconsistent with the context:

- (a) **Agreement** means this agreement, its recitals, provisions and any schedule of this agreement.
- (b) **Clause** means a clause of this **Agreement**.
- (c) **Mediation Process** means the mediation and any preliminary or ancillary step to the mediation.
- (d) **Party** and **Parties** means a party to this **Agreement** and their respective successors, trustees and permitted assigns.
- (e) **Interest Rate** means the rate of 5% per annum calculated monthly in arrears and added to the then outstanding sum.
- (f) **Sub-clause** means a sub-clause of this **Agreement**.

#### 2. Interpretation

2.1 In this **Agreement**, unless inconsistent with the context:

- (a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
- (b) Words denoting the singular number shall include the plural number and vice versa.
- (c) Words denoting any gender shall include all other genders.
- (d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.
- (e) Money references are references to Australian currency.
- (f) A reference to “**includes**”, “**including**” or “**inclusive**” is to be construed as being a reference to “includes, without limitation”, “including, without limitation”, and “inclusive, without limitation” respectively.
- (g) Headings used in this **Agreement** are for convenience and ease of reference only, and are not part of this **Agreement** and shall not be relevant or affect the meaning or interpretation of this **Agreement**.
- (h) Every obligation, covenant, agreement, condition express or implied in this **Agreement** and entered into by more than one party shall bind them jointly and each of them severally.
- (i) A provision of this **Agreement** shall not be construed adversely to the **Party** that drafted it.

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- (j) If any provision or part provision of this **Agreement** is held invalid, unenforceable or illegal for any reason, this **Agreement** shall remain otherwise in full force apart from such provision or part provision which shall be deemed deleted.
- (k) The recitals, provisions and any schedule to this **Agreement** form part of this **Agreement**.
- (l) No remedy, expressly granted to **Mediator** excludes or shall be deemed to exclude or modify any other right or remedy which would otherwise be available to **Mediator**.

### 3. Appointment

- 3.1 **Disputing Parties** appoint **Mediator** as mediator to attempt to resolve the **Dispute**.

### 4. Non-Binding

- 4.1 Nothing that occurs during the **Mediation Process** shall be binding unless agreed in writing.

### 5. Legal Representation

- 5.1 **Disputing Parties'** legal representatives may attend and participate in the mediation process subject to this **Agreement**.

### 6. Preliminary Meeting

- 6.1 **Disputing Parties** shall attend a preliminary meeting either by teleconference or in person.
- 6.2 At the preliminary meeting **Mediator** shall provide directions as to the future conduct of the mediation and the documents (if any) which need to be prepared for the mediation.

### 7. Confidentiality

- 7.1 **Mediator** and **Disputing Parties** acknowledge the confidential and without prejudice nature of:
  - (a) the matters discussed during the **Mediation Process**;
  - (b) the documents prepared as part of the **Mediation Process**; and
  - (c) the terms of this **Agreement**.
- 7.2 **Mediator** and **Disputing Parties** shall ensure that, to the extent that such information and documents are not in the public domain or already known to **Disputing Parties**, they are kept confidential and shall not, without written permission from each of the other **Disputing Parties**:
  - (a) disclose same to any third party; or
  - (b) disclose same, or seek to use same in any way, in any extant or future litigation or arbitration.
- 7.3 **Disputing Parties** shall ensure that each person participating or attending the **Mediation Process** agrees to be bound to similar confidentiality obligations as are set out in this **Agreement**.

### 8. Mediator not a witness

- 8.1 **Disputing Parties** shall not call **Mediator** as a witness to any proceedings.

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### 9. Statements made during mediation not actionable

- 9.1 To the extent permitted by law, no statements of any kind made as part of the **Mediation Process** may be used by any **Party** as the basis for an action against another for, amongst other things:
- (a) defamation;
  - (b) injurious falsehood;
  - (c) negligence; or
  - (d) a breach of any other law.

### 10. Indemnity

- 10.1 Save for fraud, **Disputing Parties** indemnify and shall keep indemnified **Mediator** for all costs, taxes and expenses on a solicitor and own client basis incurred in connection with the **Mediation Process** and any dispute arising in relation to it.
- 10.2 Save for fraud, **Disputing Parties** indemnify and shall keep indemnified the **Appointing Authority** for all costs, taxes and expenses on a solicitor and own client basis incurred in connection with the **Mediation Process** and any dispute arising in relation to it. The **Mediator** shall hold this indemnity on trust on behalf of the **Appointing Authority**.

### 11. Notices

- 11.1 Notices under this **Agreement** may be delivered by hand, by mail or by facsimile to the addresses specified in **Schedule 1**.
- 11.2 Notices shall be deemed given in the case of:
- (a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
  - (b) posting, 3 days after dispatch; and
  - (c) facsimile, upon completion of transmission.

### 12. Fees

- 12.1 **Disputing Parties** shall pay **Mediator's Fees** in the manner and rates as specified in **Schedule 1**.
- 12.2 The **Fees** are binding. The **Estimate** is not binding.
- 12.3 This **Agreement** and the **Fees** are not subject to any legislation in relation to the legal profession.
- 12.4 Unless stated to the contrary, the **Fees** are exclusive of all taxes, duties, fees or other government levies or charges, including without limitation any GST, stamp duty or otherwise, which may be imposed on or in respect of the **Fees** or the services provided under this **Agreement** or otherwise. Such taxes, duties, fees or other government charges shall to the extent permissible by law be paid by **Disputing Parties**.
- 12.5 **Disputing Parties** shall pay **Mediator** interest at the **Interest Rate** on all overdue amounts from the due date until payment is made.
- 12.6 If any payment owing to **Mediator** is not made on the due date, **Mediator** may, without further notice to **Disputing Parties**, suspend further services or its remaining obligations to **Disputing Parties** under this **Agreement**.

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### **13. Survival**

13.1 The provisions of this **Agreement** which are capable of having effect after the expiration of this **Agreement** shall remain in full force and effect following the expiration of this **Agreement**.

### **14. Entire Agreement**

14.1 Unless stated expressly to the contrary in this **Agreement**:

- (a) this **Agreement** constitutes the entire agreement between the **Parties** for the subject matter referred to in this **Agreement**. Any prior arrangements, agreements, representations or undertakings are superseded;
- (b) this **Agreement** is not to be construed as creating a joint venture, partnership or agency situation between the **Parties**. No **Party** may represent that there exists such a relationship between the **Parties**;
- (c) no **Party** may bind the other **Party** to any agreements, arrangements, contracts or understanding or represent that they have such authority; and
- (d) no modification or alteration of any provision of this **Agreement** shall be valid except in writing signed by each **Party**.

### **15. Governing Law**

15.1 This **Agreement** shall be governed by and construed according to the law of **Jurisdiction**.

15.2 The **Parties** irrevocably submit to the exclusive jurisdiction of the courts of **Jurisdiction** and the Commonwealth of Australia and any courts hearing appeals from such courts. Any proceedings in a Commonwealth court shall be commenced in **Jurisdiction**.

### **16. Agreement Costs**

16.1 All expenses (including legal costs) incidental to this **Agreement** shall be borne by the **Parties** incurring those expenses.

### **17. Counterparts**

17.1 This **Agreement** may be executed by the electronic exchange of counterparts.

**Mediation Agreement**

**Executed as an Agreement**

By **Mediator** by being signed by Steve White )  
 )  
 ) Sign here  
 )  
 )

In the presence of: Witness sign here

Name of Witness: Print Name of Witness

By )  
by being signed by the following persons )  
or if a seal is affixed witnessed by the following ) Attach company seal here  
persons: )  
 )

Director/Secretary sign here Director sign here

Print Name of Director/Secretary here Print Name of Director here

Director/Secretary Director

By )  
by being signed by the following persons )  
or if a seal is affixed witnessed by the following ) Attach company seal here  
persons: )  
 )

Director/Secretary sign here Director sign here

Print Name of Director/Secretary here Print Name of Director here

Director/Secretary Director

**Mediation Agreement**

**Schedule 1 – General Details**

**Agreement Date**

**Appointing Authority** Nil (if appointment is ad hoc)

**Dispute**

**Disputing Parties**

**Fees**

**Rates**

**Estimate**

**Jurisdiction**

Australian Capital Territory/New South Wales/Northern Territory/Queensland/South Australia/Tasmania/Victoria/Western Australia/New Zealand

**Comment [A1]:** Delete to suit.

**Mediator**

Stephen Wallace White ABN 94 669 684 644

**Notices**

As per above.