

MEDIATION AGREEMENT

This agreement is made between *D.B. Fraser Q.C.* (the "Mediator"), the parties to the proceedings described in Schedule 1 who have signed this agreement ("the parties"), and all other persons who are present at the hearing of the *Mediation*

The parties to the proceedings agree with the Mediator as follows:

- 1 We are parties to a dispute (the "dispute") the subject of the proceedings and are participating in a court ordered mediation (the *Mediation*).
- 2 We wish to resolve that dispute with the assistance of a Mediator.
- 3 We agree to the appointment of the Mediator on the terms of this agreement.
- 4 We will attempt to resolve our dispute with the assistance of the Mediator.
- 5 We will meet the Mediator at such place and times as may be agreed between us and the Mediator or as has otherwise been ordered.
- 6 We will conduct the *Mediation* in private and in such manner as is directed by the Mediator. Unless otherwise ordered, or directed by the Mediator, the mediation hearing will be carried out between 10am and 5 pm on the dates set for the mediation. Only the parties and their representatives may attend the mediation hearing unless the Mediator otherwise directs.
- 7 The following provisions are incorporated as terms of this agreement:

Part 6 of the Civil Proceedings Act 2011 (Qld);

Rules 323, 324, 325, 326, 328, 329 and 330 of the Uniform Civil Procedure Rules 1999.
- 8 We will exchange summaries of arguments as ordered, or as we consider appropriate, or as the Mediator directs, and will provide copies of such materials to the Mediator.
- 9 Material may be provided to the Mediator and identified as "Confidential - by any party.

- 10 Mediation under this agreement may be terminated:
- (a) By all parties to the dispute giving written notice to the Mediator that they have resolved their dispute; or
 - (b) By any party to the dispute at any time giving written notice of termination of the *Mediation* to each other party and to the Mediator; or
 - (c) By the Mediator giving notice to all parties to the dispute that further efforts of mediation are not justified or desirable or that he has ceased to act as a Mediator.
- 11 The parties agree that no agreement to compromise the dispute or any aspect of it will bind the parties until such agreement is reduced to writing and executed by or on behalf of such of the parties who have made such agreement.
- 12 Unless ordered or otherwise agreed between the parties, the parties agree that the costs and expenses associated with the *Mediation* (including the Mediator's fees) shall be each party's costs in the cause of the proceedings between the parties.
- 13 (a) The parties will pay the *Mediation* fees and expenses in the amounts and at the times set out in this agreement;
- (b) Unless expressly agreed in Schedule 2 the following applies to the cancellation, or postponement of the hearing of the *Mediation*:
- (i) The parties shall advise the Mediator immediately of any cancellation, or postponement of the *Mediation* or any hearing date;
 - (ii) If the *Mediation* or any hearing date is cancelled, or postponed the fee payable to the Mediator shall include payment for all work actually done by the Mediator, including any preliminary conference, or reading and/or preparation (to be charged at the hourly rate set out in Schedule 2);
 - (iii) In addition to (ii), if the cancellation, settlement or postponement, etc is within fourteen (14) days of the hearing date set for the *Mediation*, then the parties will also pay to the Mediator a fee based on an assumed 2 hours' work at such hourly rate.
 - (iv) In addition to (ii), if the cancellation, settlement or postponement, etc is within seven (7) days of the hearing date set for the *Mediation*, then the parties will pay to the Mediator a fee based on an assumed 5 hours'

work at such hourly rate.

- 14 Each of the parties to the dispute severally indemnifies the Mediator against any liability in respect of any matter arising out of this agreement or in any way connected with this agreement or anything done or omitted to be done under or in connection with it.
- 15 The Mediator is not a necessary party to any litigation or arbitration between the parties to the dispute relating to any dispute between them.

THE PARTIES TO THE DISPUTE AND ANY OTHER PERSON WHO IS PRESENT AT THE HEARING OF THE *MEDIATION* FURTHER AGREE WITH THE MEDIATOR AS FOLLOWS:

- 16 They will keep confidential all things said or done during the *Mediation* process.
- 17 The proceedings under this agreement including the following matters will be conducted on a “without prejudice” basis:
- (a) The views expressed or suggestions made by the Mediator or any party in respect of a possible settlement of the dispute;
 - (b) Admissions made by any party;
 - (c) Proposals for settlement of the dispute made by the Mediator or any party;
 - (d) The fact that any party has indicated a willingness to accept a proposal for settlement made by the Mediator or anyone else; and
 - (e) Notes or statements made by the Mediator.
- 18 They will act in a courteous and polite manner during the course of the mediation in their dealings with other parties, third persons present and the mediator.
- 19 They will not be bound by any comments, suggestions or recommendations of the Mediator.
- 20 They will not require the Mediator to give evidence or produce any document in any legal proceedings concerning the dispute, other than legal proceedings brought to enforce or challenge the validity of any agreement arising from the *Mediation*.
- 21 To the extent which the law permits any liability of any nature whatsoever of the Mediator, in respect of any matter arising out of this agreement or in any way connected with this agreement or anything done or omitted to be done under or in connection with it or the *Mediation* is excluded.

- 22 The express terms of this agreement and any referral order contain the whole of the obligations of the Mediator relating to this agreement and the Mediation. Any obligation of the Mediator which might otherwise be implied is excluded.
- 23 This agreement can be signed in counterparts and, upon execution by any party or person, will be binding upon that party or person.

SCHEDULE 1

THE PROCEEDINGS

SCHEDULE 2
MEDIATOR'S FEES AND EXPENSES

- 1 The hearing of the *Mediation* is estimated to take [] day/s. The Mediator's fees (including all necessary preparation, reading and administration) will be \$6,000.00 plus 10% GST per day. A "day" means the period from 10 am to 5pm (and 2 hours administration and preparation by the mediator outside those times). Any additional time in preparation or otherwise will be charged at the rate of \$600.00 an hour (plus GST).
- 2 The parties have agreed to bear the mediators fees and any expenses incurred hereunder in the following proportions-
[INSERT]
- 3 The parties agree to bear the expense of hiring a mediation facility if, for any reason, the mediation is not able to be conducted in full at level 7 Inns of Court.
- 4 The Mediator's fees and any expense incurred by the mediator are to be paid in full within 30 days of the provision (by facsimile transmission or any other means of communication) of a *Memorandum of Fees* by the Mediator to either a party or the party's solicitors.
- 5 Additional details of the basis upon which the Mediator's fees and expenses are calculated and when and by whom they are payable are set out in the Mediator's Cost Disclosure letter.

Name of Mediator: Donald B Fraser QC
Address of Mediator: 7/107 North Quay, Brisbane QLD 4000
Signature: _____
Date: _____

THIS AGREEMENT IS SIGNED BY THE PARTIES TO THIS MEDIATION:

1 **Name of Party:** _____
Address of Party: _____
Status of Party: _____
**Signature (Party or
Authorised Solicitor):** _____
**Name of Authorised
Solicitor (if appropriate):** _____
Date: _____

2 **Name of Party:** _____
Address of Party: _____
Status of Party: _____
**Signature (Party or
Authorised Solicitor):** _____
**Name of Authorised
Solicitor (if appropriate):** _____
Date: _____

3 **Name of Party:** _____

Address of Party: _____

Status of Party: _____

**Signature (Party or
Authorised Solicitor):** _____

**Name of Authorised
Solicitor (if appropriate):** _____

Date: _____

4 **Name of Party:** _____

Address of Party: _____

Status of Party: _____

**Signature (Party or
Authorised Solicitor):** _____

**Name of Authorised
Solicitor (if appropriate):** _____

Date: _____

5 **Name of Party:** _____

Address of Party: _____

Status of Party: _____

**Signature (Party or
Authorised Solicitor):** _____

**Name of Authorised
Solicitor (if appropriate):** _____

Date: _____

6 **Name of Party:** _____

Address of Party: _____

Status of Party: _____

**Signature (Party or
Authorised Solicitor):** _____

**Name of Authorised
Solicitor (if appropriate):** _____

Date: _____

IN ADDITION THE PERSONS ATTENDING THIS MEDIATION WHO ARE NOT PARTIES AGREE TO COMPLY WITH THE OBLIGATIONS OF CONFIDENTIALITY AND AS OTHERWISE SET OUT ABOVE:

7 **Name of Person present:** _____

Address: _____

Status: _____

Signature: _____

Date: _____

8 **Name of Person present:** _____

Address: _____

Status: _____

Signature: _____

Date: _____

9 **Name of Person present:** _____

Address: _____

Status: _____

Signature: _____

Date: _____

10 **Name of Person present:** _____

Address: _____

Status: _____

Signature: _____

Date: _____

11 **Name of Person present:** _____

Address: _____

Status: _____

Signature: _____

Date: _____

12 **Name of Person present:** _____

Address: _____

Status: _____

Signature: _____

Date: _____

13 **Name of Person present:** _____

Address: _____

Status: _____

Signature: _____

Date: _____