

**Douglas Turnbull** B. Juris., LL.B (Hons)

Barrister-at-Law

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Professional Standards Legislation*

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## **AGREEMENT FOR MEDIATION**

**PARTIES TO MEDIATION:**

**(Insert)**

**SOLICITORS:**

**(Insert)**

**MEDIATOR:**

**Douglas Turnbull, Barrister-at-Law.**

This agreement provides an alternative dispute resolution procedure for the parties using the services of the Mediator.

### ***Mediator's fee***

- \$550.00 **inclusive of goods and services tax** for each hour actually spent by the Mediator, either reading the brief in preparation for the mediation, or actually conducting the mediation itself, or being involved in any arrangements for initial directions or finalising any agreement that might arise out of the mediation.
- There is a **minimum** overall charge of 5 hours (\$2,750.00 inclusive of GST).
- The **maximum daily charge** is \$4,400.00. inclusive of GST.
- The Mediator's account is payable **(one third to each party)** within 14 days after it is rendered.

### ***Mediator's Brief***

- A brief of relevant material (agreed to by all parties) shall be provided to the Mediator at least 3 working days prior to the mediation.

### ***Expert Witnesses***

- If there are any valuation, accounting, engineering, medical or other expert witnesses who are relevant to the matter, then it may help if they can be available by telephone so that any matters raised in their reports can be clarified if necessary without delaying the mediation.

### ***Availability of Clients***

- Unless otherwise agreed in writing, the respective clients will be personally present for the mediation, their respective contributions being *pro rata* to the number of parties.

***Telephone/video participation of any person***

- If a telephone or video link or Telstra conference call is required by any party, then that party must make the appropriate arrangements at their own expense well prior to the mediation.

**MEDIATION RULES**

***The parties agree that the mediation will be conducted in accordance with the following rules:***

1. The mediation and all discussion leading up to the mediation and any discussions which relate to arrangements for terminating the mediation or finalising any agreement or the terms of any order arising out of the mediation are entirely ***without prejudice and confidential to the parties and the Mediator***, for all purposes, including any Court proceedings.
2. Further, all of the parties agree that any notes made in the Mediator's brief and/or correspondence, orders, directions, notes, notations or materials made by the Mediator are entirely ***without prejudice and confidential to the Mediator***, and cannot be the subject of the disclosure, whether to a party to the mediation or any other person, Tribunal or Court, they cannot be called for by subpoena, referred to or relied upon by any party in any way, including during any Court proceedings, subsequent to the termination of mediation. Any return, after the mediation, of the Mediator's brief containing any Mediator's notations or documents to any particular party **shall not constitute any waiver of this privilege and confidentiality**.
3. **Submissions** at the mediation may be made on behalf of any party orally or in writing as that party sees fit. The other parties and the Mediator should be provided with a copy of any written submission.
4. **At the commencement of the mediation:**
  - (a) The Mediator will make a brief statement to the parties as to the purposes and procedures of the mediation;

- (b) Each party will then make a brief opening submission dealing with issues of liability and the relief being sought. The order of the openings may require discussion.
- (c) There should be no interruptions during the openings. The submissions should be properly structured and succinct, similar to the opening at the commencement of a trial.
- (d) Each party will then make a submission in response. The order of the responses will require discussion.
- (e) Any party may request a short adjournment for instructions prior to making a response;

5. The further progress of the mediation after these opening submissions is then best determined by discussion between the parties. The procedures should be flexible, and designed to suit the particular mediation. Procedures for negotiation may include the parties retiring to separate rooms, with the Mediator speaking separately to the parties or speaking to the legal advisers only. Another way to proceed is that the Mediator confers with all of the legal advisers. A further alternative is for the parties themselves and their advisers to remain in open session and have an open and frank discussion of factual and legal issues. *It is usually best left to the parties themselves to determine these procedures in discussion with the Mediator after the opening submissions have been made.* **However, all parties will abide by any rulings or directions on procedural matters made by the Mediator prior to or during the mediation.**
6. If at any time during the mediation the Mediator speaks privately with any party or with a party's legal advisers then anything said to him in such a private discussion **will be strictly confidential and privileged to that party only** and no particulars of what is said either to him or by him on such privileged occasion will be released by him to any other party **without the express consent of the original party,** nor can the Mediator be required at any later time (including after the mediation has finished) to divulge any such confidential and privileged information to any other party or to a Court.
7. The Mediator will keep a written record of any offers made by any party during the progress of the mediation to prevent confusion as to what position the negotiations

have reached at any time. **Therefore, the Mediator should be a party to the making of any offer by one party to another so that it can be properly recorded.**

8. The mediation shall not result in a final agreement between the parties on any issue, or on all of the issues, until the terms of that agreement have been set out in writing, each party or their authorised representative have signed those terms of agreement and the Mediator has finally signed those terms to confirm that agreement has been reached.
9. It will be a matter for the legal advisers of the parties to determine whether a consent order from any Court is desirable to assist with the enforceability of the agreement achieved at the Mediation, or whether an order from any Court is legally required to make it finally binding, and if so, to obtain any such Court order. **The responsibilities and duties of the Mediator will not extend past the point where the parties have executed the terms of agreement at the end of the mediation, and the Mediator has finally signed off on those terms as being the final agreement resulting from the ADR process.**
10. The parties should note that the rules of various Courts can include provisions to the effect that any court proceedings dealing with the subject matter of the Mediation are **stayed** for a certain period past the end of the Mediation, and that no steps can be taken in those proceedings, **including any formal offers under the rules of any Court**, during the period of any such stay. **Each party should take separate legal advice about those matters.**

DATED: **Insert**

**We agree to the mediation being conducted in accordance with these conditions and rules:**

**Signed by DOUGLAS TURNBULL**

.....

Signed on behalf of (Insert name of party)

.....

Solicitor for party

Signed on behalf of (insert name of party)

.....

Solicitor for party