

Anne-Marie Rice

ARBITRATOR

Arbitration Agreement

BETWEEN

Anne-Marie Rice Arbitrator

AND

Party A Represented by Firm A

AND

Party B Represented by Firm B

Arbitrator

1. Anne-Marie Rice (“the Arbitrator”) is an Arbitrator, within the meaning of Section 10M of the Family Law Act (“the Act”), and is qualified under the provisions of Regulations 67B the Family Law Regulations (“the Regulations”).

Appointment of Arbitrator

2. Party A and Party B (“the parties”) to this agreement appoint the Arbitrator to arbitrate the dispute between the parties in accordance with the provisions of the Act, the Regulations and the Family Law Rules (“the Rules”).
3. In making that appointment the parties acknowledge that:
 - a. each has received independent legal advice about the nature of this agreement, the process of arbitration and the immunity afforded to the Arbitrator;
 - b. they have met and/or will meet with the Arbitrator for a Planning Meeting to prepare the written Arbitration Plan which will form part of this agreement and which can only be varied with the consent of all parties or at the direction of the Arbitrator;

- c. the arbitration will result in an award capable of registration in the Family Court of Australia, Family Court of Western Australia or Federal Circuit Court and which:
 - i. will take effect as if it were a decree of the court; and
 - ii. can only be set aside, varied or appealed in accordance with sections 13 J and 13K of the Act;
- d. the power granted to the Arbitrator by this agreement includes the power to award costs under section 117(2) of the Act including:
 - i. costs of the matter in court proceedings (before the matter was referred to arbitration) if an order for costs has not previously been made;
 - ii. costs of each party to the arbitration including the Arbitrators fees and disbursements; and
 - iii. costs of each party's legal representation (whether on a fixed, solicitor/client or indemnity basis); and
- e. this agreement binds the party's legal personal representatives, servants or agents to comply with the terms of this agreement and any lawful directions of the Arbitrator.

The Process of the Arbitration

- 4. The parties acknowledge and accept that, having entered into this agreement to arbitrate, each party is bound by the agreement until and unless the arbitration is:
 - a. finally determined by the Arbitrator; or
 - b. suspended or terminated by:
 - i. direction of the Arbitrator;
 - ii. court order; or
 - iii. an agreement in writing between the parties provided to the Arbitrator.

Resolution by Consent

- 5. In the event the parties to the dispute reach agreement prior to the delivery of the award, they may:
 - a. apply to the Arbitrator for a consent award; and/or
 - b. apply to the appropriate Court for Consent Orders; and/or
 - c. enter into a Financial Agreement under the Act.and in each case the arbitration will be deemed to have been finally determined by the Arbitrator.
- 6. The parties must inform the Arbitrator in writing of the Agreement and the parties will be liable for any costs of the Arbitrator (including preparation for the Arbitration in accordance with Schedule 2 to this agreement) any disbursements already incurred.

Arbitrators Obligations

7. The Arbitrator shall:
 - a. accord each party procedural fairness and an opportunity to be heard consistent with the terms of this agreement;
 - b. conduct the arbitration in an impartial, confidential, expeditious and economic manner;
 - c. determine the matters in dispute in accordance with the provisions of the Act;
 - d. produce to the parties an award, and written reasons, within 28 days of completion of the arbitration hearing, 28 days of receipt of any transcript if required, or 28 days of receipt of written material if no hearing is to occur (or such extended time as agreed);
 - e. inform the parties in writing if the Arbitrator is, or becomes, aware of anything that could lead to direct or indirect bias in favour of or against any party in which case the parties may object to the Arbitrator continuing to act and request direction from the Arbitrator (or the court if relevant) or request the agreement of the other party to terminate the arbitration;
 - f. ensure an appropriate venue is available for the arbitration and confirm those arrangements with the parties;
 - g. enable the parties to be represented by the legal practitioner of their choice on the basis that the practitioner present at the arbitration hearing is bound by the terms of this agreement, the Arbitration Plan and any directions made by the Arbitrator as to the conduct of the arbitration; and
 - h. collate and provide to the parties the information required by the Regulations and set out in Schedule 1 to this agreement.

8. The Arbitrator shall NOT:
 - a. accept any other appointment in relation to this matter;
 - b. be called to give evidence (or produce any notes, working papers or other documents) in relation to any matter raised in the arbitration except in relation to an action in which this agreement is sought to be enforced or interpreted or as may otherwise be lawfully required by a court;
 - c. with the exception of administrative arrangements, discuss any aspect of the matter or arbitration with the legal representative for either party without informing the other legal representative of the substance of the conversation; and
 - d. disclose to any person not a party to this agreement, any information about the arbitration, the dispute, the parties, or any other matter learned during the course of the arbitration, unless expressly authorised by the relevant party in writing or required by law.

The Parties' Obligations

9. The parties shall, unless otherwise agreed in writing:
 - a. each provide full and frank disclosure of all matter relevant to the dispute, including all relevant information and documents;
 - b. prepare for, and attend at, the entirety of the Planning Meeting, and hearing (if relevant) and present their case in a manner consistent with the aims of expedition, economy and fairness;
 - c. abide by the directions given by the Arbitrator in the course of the arbitration process including, particularly those determined at the Planning Meeting;
 - d. be bound by the confidentiality of the process and no evidence shall be called or given by any party to this agreement in relation to taking place during the arbitration other than for registering, reviewing or enforcing the award, or as required by law; and
 - e. communicate with the Arbitrator, via their solicitors, at the Arbitrator's nominated address and the parties' acknowledge that such communications are not confidential.

The Powers of the Arbitrators

10. As prescribed in the Act, Regulations and Rules, the powers of the Arbitrator, include to:
 - a. require a person, whether a party to this agreement or not, to attend to give evidence or to produce documents;
 - b. make procedural directions and otherwise determine matters relating to the conduct of the arbitration;
 - c. dispense with, or apply on notice to the parties, the rules of evidence;
 - d. make any necessary interim awards which might be made by a court in relation to the subject of the arbitration; and
 - e. if a party to this agreement fails to comply with any of the required steps or interim awards the Arbitrator may:
 - i. adjourn or suspend the arbitration until the breach is remedied (including setting a time frame for the remedy) and terminate the arbitration if the breach is not remedied;
 - ii. proceed to determine the arbitration and publish an award in the absence of that party;
 - iii. in the case of an arbitration pursuant to section 13E of the Act, refer the matter to the Court which ordered the arbitration.
11. A minor or technical breach of the obligations imposed by this agreement upon the Arbitrator shall not render this agreement voidable by either party.
12. If either party identifies a minor mistake or mathematical error following the delivery of the final award, the Arbitrator may, upon the written request of the parties, rectify the error. To facilitate the Arbitrator's power to do so, the terms of this agreement shall be revived and any supplementary award

issued by the Arbitrator shall be clearly marked and shall stand in place of the original award.

Arbitration Fees and Outlays

13. The Arbitrators fees and outlays are payable in accordance the fees set out in Schedule 2 to this Agreement (“The Fee Schedule”).
14. Unless otherwise agreed in writing, the Arbitrators fees and outlays shall be shared equally between the parties.
15. All outlays as identified in Schedule 2 shall be paid to the Arbitrator within 7 days of the issuing of the Arbitrator’s invoice.
16. The relevant fees must be paid into the trust account of the parties’ legal representatives (or in such other facility as agreed between the Arbitrator and the relevant party) prior to the commencement of the Arbitration and held until the release of the written award or until the arbitration is suspended, terminated, or finally determined in accordance with this agreement.
17. The fees for the Arbitration as identified in Schedule 2 shall be payable within 7 days of the release of the award or suspension, termination of final determination of the arbitration.
18. For the purposes of State Laws dealing with disclosure and estimates of legal costs and Costs Agreements, this agreement is taken to be a costs disclosure and costs agreement.

Documentation and Recording of Proceedings

19. The Arbitrator will prepare, and simultaneously circulate to the legal representatives, a typed copy of the Arbitration Plan detailing the outcome of the Planning Meeting.
20. Each party to the arbitration, and the Arbitrator, shall be entitled to make an audio recording of the arbitration hearing providing:
 - a. any party proposing to make a recording advises the other party and the Arbitrator in advance;
 - b. the recording shall be for the use of the party making it and shall only be used for the purpose of the arbitration or any legal challenge to it; and
 - c. any recording made by the Arbitrator shall form part of the Arbitrator’s notes.
21. Upon agreement, or at the request of the Arbitrator, the parties may arrange for a transcript of the proceedings to be made providing:

- a. the costs of such transcript are agreed (and in the case of a transcript requested by the Arbitrator, are shared equally);
- b. a copy (in both electronic and typed form) shall be provided to the Arbitrator (and shall thereafter form part of the Arbitrator's notes); and
- c. the transcript remains confidential and shall be used only for the expeditious conduct of the arbitration or any review of the award or other court process associated with the arbitration.

General

- 22. The two schedules referred to in, and attached to, this agreement are incorporated into, and form part of, this agreement.
- 23. Any indulgence or forbearance granted by the Arbitrator to either party to the dispute shall not render any part of this agreement void or voidable.
- 24. Any substantial alternations to this agreement shall be evidenced in writing and signed by all parties to the agreement.
- 25. The parties to this agreement have signed this agreement (including initialling each page) and agree to be bound but its terms.

SIGNED by the Arbitrator

SIGNED by PARTY 1)
 In the presence of)

 Party 1

.....
 Signature and Name of Witness

SIGNED by PARTY 2)
 In the presence of)

 Party 2

.....
 Signature and Name of Witness

SCHEDULE 1

Information Required by Regulations

Date of Agreement	
Name, Address and Contact Details of Party 1	
Solicitor for Party 1	
Contact details for Solicitor for Party 1	
Counsel for Party 1	
Contact details for Counsel for Party 1	
Name, Address and Contact Details of Party 2	
Solicitor for Party 2	
Contact details for Solicitor for Party 2	
Counsel for Party 2	
Contact details for Counsel for Party 2	
Name of Arbitrator	Anne-Marie Rice
Contact details for Arbitrator	anne-marie@ricemediations.com.au PO Box 13018 George St Brisbane 4003 Ph: 3253 7117
Date, Time and Place of Planning Meeting	
Estimated duration of Planning Meeting	Not less than 1 hour
Estimated Cost of Planning Meeting	In accordance with Schedule 2 of this agreement
Date, Time and Place of Arbitration	To be confirmed at the Planning Meeting
Type of Arbitration	Court Ordered or Relevant property/financial Arbitration (<i>delete as appropriate</i>)
Estimated duration of Arbitration	To be confirmed at the Planning Meeting
Estimated Costs of the Arbitration	In accordance with Schedule 2 of this agreement
Application of Rules of Evidence (Reg 670)	To be confirmed at the Planning Meeting
Venue hire fee	To be confirmed at the Planning Meeting
Recording/Transcript required	To be confirmed at the Planning Meeting
Costs of Recording/Transcript	To be confirmed at the Planning Meeting
Conduct of the Arbitration	1. The Arbitrator has the responsibility for the conduct of the Arbitration.

	<ol style="list-style-type: none">2. The arbitration will be conducted with a degree of formality similar to court hearings.3. Parties may appear personally or through their legal representatives.4. Parties may rely on witness statements and, subject to the direction of the Arbitrator, may lead oral evidence.5. Parties have the right to produce evidence from expert (and other) witnesses.6. The parties must make themselves and any witnesses available for cross-examination, which shall occur at the direction of the Arbitrator.7. Parties or their legal representatives have the right to make submissions to which the Arbitrator will have proper regard.
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SCHEDULE 2

Fees* and Disbursements

*all figures are exclusive of GST

Arbitration on the Papers		
Planning Meeting (Includes preparation of Arbitration Plan)		\$500 per hour
Standard Matter	Where the following can be completed in a single day: <ul style="list-style-type: none"> • reading of the material; and • reading of submissions; and • determining and producing a written award 	\$3,500
Complex Matter	Where extensive material is required to be read and the issues are of such complexity that more than a day is required for: <ul style="list-style-type: none"> • reading of the material; and • reading of submissions; and • determining and producing a written award 	\$3,500 for the first day \$1,200 for every subsequent day

Arbitration Hearings		
Planning Meeting (Includes preparation of Arbitration Plan)		\$500 per hour
Hearing Fee	Includes reading and consideration of material	\$2,500 per day

	to be relied upon at the hearing	
Award Writing Fee	Likely time beyond 1 day to be estimated at Planning Meeting and confirmed after final day of hearing	\$3,500 per day

Outgoings and Disbursements		
Venue Hire	To be arranged and paid for directly by the legal representatives	
Transcript	To be arranged and paid for directly by the legal representatives	
Air fares	Economy class travel	At cost
Accommodation	Appropriate standard	At cost

Sharing of costs and Payment

All fees to be shared equally by the parties unless agreed in writing

All fees and disbursement costs are to be secured by the legal practitioners prior to the arbitration and in accordance with Clause 16 of this agreement. In the event that confirmation that those costs are secured is not received by the Arbitrator 7 days prior to the arbitration, the arbitration will not proceed and the full cancellation fee (\$3,500) shall become owing.

Cancellation Fee	
Cancellation or Postponement prior to Planning Meeting	Nil
Cancellation or Postponement after Planning Meeting (and more than 14 days prior to arbitration date)	Fees for the Planning Meeting plus any fees payable on account of reading/preparation for arbitration payable at Arbitrator's discretion
Cancellation or Postponement after Planning Meeting (and less than 14 days prior to arbitration date)	Cancellation fee of \$3,500 may be charged at Arbitrator's discretion

