

# Mediation Agreement

**Date:** [      ]

**Parties:** [name and address of each party, including ACN if a company]

**Mediator:** [name and address of each mediator]

**PeaceWise:** PeaceWise Limited ACN 125 667 067 of 159.  
PO Box 2442 Nth Parramatta NSW 1750.

We, the parties listed above are presently involved in a conflict which is briefly summarised below (Dispute). We agree to participate in Christian mediation and come to it with a commitment to participate actively in the process with a desire to find resolution to all the issues in dispute (substantive, relational and personal), an intention to develop and consider options, a willingness to negotiate and an understanding that each person has the right to speak for themselves and to be treated with respect during the mediation sessions.

We now agree the following matters:

## Role of PeaceWise

We understand that PeaceWise is **not** directly involved in this case and that it does not have control over or responsibility for the mediation process. The involvement of PeaceWise is limited to:

- liaising with and providing the parties with one or more suggested mediators for this matter who have agreed to operate under the process of Christian mediation promoted by PeaceWise as represented in this agreement
- receiving a referral and administration fee as set out below as a contribution towards the costs of doing this.

## Rules of Procedure to apply

We have received and read the *Rules of Procedure for Christian Mediation* attached to this agreement, which we agree to follow.

In particular, subject to the more detailed provisions of those *Rules*, we acknowledge and agree that:

## Role of mediator

1. We appoint the Mediator, and the Mediator accepts the appointment, to mediate the Dispute in accordance with the terms of this agreement. Where there is more than one person acting as the Mediator, the parties acknowledge that each such person enters into this agreement severally, and not as the agent, employee or contractor of the other.

2. The Mediator will attempt to assist us in reaching a voluntary settlement of this dispute through a process of Christian mediation that is based on biblical principles, as set out in more detail in the *Rules*.

3. The Mediator will not:

- give legal or other professional advice to any party; or
- impose a result on any party; or
- make decisions for any party.

## Conflicts of interest

4. Before the mediation begins, the Mediator must 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 that could affect his or her impartiality.

5. If in the course of the mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator must immediately inform the parties of these circumstances. The parties will then decide whether the mediation will continue with that mediator or with a new mediator appointed by the parties (or, if they cannot agree, by PeaceWise).

## Fees payable

6. The fees for this mediation will be as follows:

### *Fees payable to the Mediator*

- For telephone and other preparatory work done before any physical mediation meetings take place: \$x per hour of Mediator time involved, plus GST (if applicable).
- For each day of mediation meetings : \$x (note – this covers two persons acting as the Mediator)
- Reimbursement of all expenses reasonably incurred by the Mediator in the course of the mediation, including such matters as any written material provided to the parties for use in connection with the mediation, travel expenses – as detailed more fully in the *Rules of Procedure for Christian Mediation*

### *Fees payable to PeaceWise*

- \$x referral and administration fee (one-off payment to which no GST applies).

### *Venue costs*

- The parties will ensure that a suitable venue is available for the mediation to take place, which includes one main mediation room and at least one additional room that is not within hearing distance of the other room.

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## **Brief summary of the dispute and the issues to be resolved or addressed:**

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**Executed as an agreement by the following persons**

Note: If a person is signing for a party which is not an individual person, the person signing warrants that they have authority to bind the party for which they are signing

**Parties:**

[ name of Party ] .....  
**print name, position held**

[ name of Party ] .....  
**print name, position held**

**Mediator:** .....  
**print name**

.....  
**print name**

**PeaceWise Ltd:** .....  
**print name, position held**

# RULES OF PROCEDURE FOR CHRISTIAN MEDIATION

## 1. Purpose

The purpose of Christian mediation is to glorify God by helping people to resolve disputes in a mediatory rather than an adversarial manner. In addition to facilitating the resolution of substantive issues, Christian mediation seeks to reconcile those who have been alienated by conflict and to help them learn how to change their attitudes and behaviour to avoid similar conflicts in the future. These Rules must be interpreted and applied in a manner consistent with this purpose.

## 2. PeaceWise's rules to apply

The parties have agreed to submit their dispute to PeaceWise to be dealt with under these rules of procedure, which set out PeaceWise's approach to resolving disputes through Christian mediation.

## 3. Definitions and Rules of Construction

A. *PeaceWise* refers to PeaceWise Ltd ACN 125 667 067, including any of its staff, directors, volunteers, or other persons who serve on behalf of the organisation.

B. *Mediation* is the voluntary submission of a dispute for biblically-based mediation, which may also include conflict counselling/coaching.

C. *Mediator* refers to the person or persons that the parties select to act as mediator of their dispute.

D. A *Mediation Agreement* is an agreement to submit an existing dispute to mediation.

E. A *Mediation Clause* in a contract is a provision written into a contract that requires future disputes related to the contract to be resolved by mediation.

F. The *mediation process* includes all phases of mediation, from the initial contact with PeaceWise through the conclusion of mediation or other contact with PeaceWise or the Mediator.

G. *Mediation* utilises one or more neutral intermediaries who assist the parties in arriving at their own voluntary and mutually satisfactory resolution. The Mediator may provide the parties with an advisory opinion, but that opinion will not be legally binding.

H. *Church leaders* are the staff and official leaders of both the church that a person usually attends or formally belongs to and the denomination, if any, to which that church belongs.

I. A *person or party* includes an individual or an entity, corporate or otherwise.

J. Any time the word "may" is used in these Rules, it indicates that a person has complete and sole discretion in deciding whether to take certain action or actions.

K. Unless indicated otherwise, a word used in the plural form shall be understood to include the singular form, and vice versa.

N. Any provision of these Rules may be modified, but only by a written agreement signed by the parties to the Mediation Agreement, the Mediator and PeaceWise.

## 4. Application of Law

The Mediator may take into consideration any state, federal, or local laws that the parties bring to their attention, but the Bible is the supreme authority governing every aspect of the mediation process.

## 5. Commencing Mediation

A. Any person may initiate mediation by informing PeaceWise of the nature of the dispute, the names of the other parties involved, and the remedy sought. If the parties are subject to a Mediation Clause, they will follow the provisions of that clause in terms of how mediation may be initiated.

B. PeaceWise may postpone mediation until reasonable efforts have been made by the parties to resolve the dispute in private or with the help of their churches, pursuant to Matthew 18:15-20 and 1 Corinthians 6:1-8. At the same time, PeaceWise may provide the parties with individual biblical counselling/coaching or written resources designed to facilitate a private resolution.

C. PeaceWise or the Mediator may require any person (other than the parties but including lawyers and support persons) attending the mediation to sign an agreement not to use in a court of law any information acquired through mediation; this provides limited protection for communications made during the mediation process.

D. Mediation may commence only after the parties sign a mediation agreement. If persons who have a legal interest in the dispute refuse to consent to mediation, mediation will affect only the rights and responsibilities of those joined as parties.

E. All Mediation Agreements must contain a statement of the issues to be resolved.

F. If legal action is pending at the time mediation is commenced, PeaceWise may require that the parties take steps to stay or postpone proceedings pending the conclusion of mediation.

G. If a party believes that property or rights may be irreparably harmed by delay, he or she may request temporary (injunctive) relief or action.

## **6. Involvement of Insurer**

If a dispute or claim submitted to mediation involves an alleged injury or damage that may be covered by a party's insurance, the insurer must be invited to participate in the mediation process in order to facilitate a prompt and equitable resolution.

## **7. Withdrawal**

A. The Mediator may withdraw at any time from any case if the Mediator decides that mediation is inappropriate or ineffective.

B. Any party may withdraw at any time from mediation, but must discuss this with the Mediator before doing so.

## **8. Fees and Expenses**

A. A non-refundable administrative fee may be charged for mediation services. If an administrative fee is to be charged, PeaceWise must provide the parties with written fee details, which must form part of the Mediation Agreement signed by parties. PeaceWise may reduce the fee or arrange a payment plan for parties who would not otherwise be able to afford Christian mediation.

B. If an hourly mediation fee is to be charged, the Mediator must provide the parties with written fee details, which must form part of the Mediation Agreement signed by parties. PeaceWise or the Mediator may require the parties to pay an advance deposit to cover the anticipated expenses of mediation, as determined by PeaceWise.

C. The parties must reimburse the Mediator for all direct expenses associated with a case, including long distance telephone calls, travel, materials provided, and other out-of-pocket expenses.

D. All fees and expenses incurred by the Mediator must be shared equally by the parties unless agreed otherwise in the Mediation Agreement.

E. Withdrawal by any party or the Mediator does not relieve the parties of their responsibility to pay any of these fees and expenses.

## **9. Replacement of the Mediator**

A. A person proposed or approved as a mediator must disclose to PeaceWise any circumstances likely to affect impartiality or the person's ability to perform the duties of a mediator. Upon receipt of such information from that person or from another source, PeaceWise must either change its proposal or communicate the information to the parties. After consulting with the parties, PeaceWise must determine whether a mediator who has already been appointed should be disqualified, and its decision will be final and binding.

B. If any appointed mediator withdraws, is disqualified, or is unable to perform the duties of the office, the remaining Mediators, if any, may continue with the mediation, unless the parties unanimously agree, or PeaceWise decides, that the vacancy should be filled.

## **10. Time and Place of Mediation Meetings**

The Mediator will determine the time, place and other conditions of the initial mediation meetings, after taking into consideration the preferences of the parties. The Mediator will determine the time, place and other conditions (including adjournments and continuances) of subsequent mediation meetings.

## **11. Right to a Support Person**

The parties have the right to be accompanied by a support person throughout the mediation process. However, that person must not actively participate in the mediation process unless the parties and the Mediator have agreed to such participation.

## **12. Right to a Lawyer**

A. Mediation can affect substantial legal rights and responsibilities. Therefore, parties have the right to be assisted or represented by independent lawyers throughout the mediation process.

B. When the Mediator is informed that a party has retained a lawyer, the Mediator may contact the lawyer to discuss the case and invite his or her cooperation in the mediation process.

C. A party must notify PeaceWise and the Mediator at least 5 days in advance if he or she desires to have a lawyer present at a mediation meeting. This notice must include the name and address of the lawyer. If other parties will not have lawyers present with them during mediation meetings, the Mediator may exclude all lawyers from mediation meetings. If necessary to fulfil the purpose of Christian mediation (see Rule 1), PeaceWise may disqualify a lawyer from participating in mediation, provided his or her client is given reasonable time to secure another lawyer.

D. During mediation, lawyers must serve only as advisors to their clients, and the clients will be expected to speak for themselves as much as possible.

E. No lawyer who has served as a mediator may represent any party in a subsequent legal proceeding concerning the matter that was presented for mediation, nor may such a lawyer use in other proceedings any information that was obtained during mediation.

## **13. Evidence in Mediation**

A. The parties must cooperate with the Mediator and each other in providing documents, names of witnesses, and other information that will contribute to an understanding of the dispute. If a party fails to make full disclosure of information relevant to the issues in dispute, the parties acknowledge that any agreement reached at the mediation is at risk of being set aside and of being legally unenforceable.

B. The parties may offer any evidence that they consider to be fair, relevant, and pertinent to the dispute, and they must produce any additional evidence that the Mediator deems necessary for understanding and resolving the dispute.

C. The Mediator will be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence will not be necessary.

D. The Mediator may receive and consider the evidence of witnesses orally or by written statement, and may make a personal inspection or investigation of relevant premises or objects.

## **14. Confidentiality**

A. Because of its biblical nature, Christian mediation encourages parties to openly and candidly admit their offences in a particular dispute. Thus, mediation requires an environment where parties may speak freely, without fear that their words may be used against them in subsequent legal proceedings. Moreover, because mediation is expressly designed to keep parties out of court, Mediators would not do so if they believed that any party might later try to force them to testify in any legal proceeding regarding a mediation case. Therefore, all communications that take place during the mediation process must be treated as 'without prejudice' settlement negotiations and will be strictly confidential and inadmissible for any purpose in a court of law, except as provided in this Rule or in Rule 15.

B. This Rule extends to all oral and written communications made by the parties or by PeaceWise or the Mediator, and includes all records, reports, letters, notes, and other documents received or produced by PeaceWise or the Mediator as part of the mediation process, except for those documents that existed prior to the mediation process and were otherwise open to discovery apart from the mediation process. The parties may not compel PeaceWise or the Mediator to divulge any documents or to testify in regard to the mediation process in any judicial or adversarial proceeding, whether by personal testimony, deposition, written interrogatory, or sworn affidavit.

C. Mediated settlement agreements reached by the parties will be confidential, except as provided in Rule 15, unless the parties agree otherwise in writing, or unless an agreement or decision must be filed with a civil court for purposes of enforcement.

D. PeaceWise or the Mediator may divulge appropriate and necessary information under the following circumstances, and the parties agree to waive confidentiality and hold PeaceWise and the Mediator harmless for doing so: (1) when, as part of its normal office operations, PeaceWise consults with its staff members or outside experts on a confidential basis regarding particular issues or problems related to a case; (2) when compelled by statute or by a court of law; (3) when an action has been brought against PeaceWise or the Mediator as a result of participation in a mediation case; (4) when PeaceWise or the Mediator deems it appropriate to discuss a case with the church leaders of parties who profess to be Christians; (5) when PeaceWise or the Mediator consults with a mentor or supervisor on a confidential basis (6) when PeaceWise or the Mediator deems it necessary to contact appropriate civil authorities to prevent another person from being harmed.

E. In spite of these confidentiality protections, some of the information discussed during mediation may not be confidential as a matter of law or may be discoverable outside the mediation process and used in other legal proceedings, and neither PeaceWise nor the Mediator will have any liability in these circumstances.

## **15. Church Involvement**

Unless agreed otherwise, the Mediator or PeaceWise may discuss a case with the church leaders of parties who profess to be Christians. If a party who professes to be a Christian is unwilling to cooperate with the mediation process or refuses to abide by an agreement reached during mediation, the Mediator, PeaceWise or the other parties may report the matter to the leaders of that person's church and request that they actively participate in resolving the dispute. If a church chooses to become actively involved, it may, at its discretion, review what has transpired during mediation, obtain such additional information as it deems to be helpful, and take whatever steps it deems necessary to facilitate remediation and promote a biblical resolution of the dispute (see Matt. 18:15-20). PeaceWise or the Mediator may disclose to the church any information that may have a bearing on its investigation or deliberations.

## **16. Waiver of Right to Object**

Any party who proceeds with a mediation meeting after learning that any provision of these Rules has not been complied with, or who fails to object in writing within 3 days of learning that any provision of these Rules has not been complied with outside of a mediation meeting, will be deemed to have waived the right to object.

## **17. Interpretation and Application of Rules**

The Mediator will interpret and apply these Rules insofar as they relate to the Mediator's powers and duties. PeaceWise will interpret and apply all other Rules and resolve all other issues and questions pertinent to the mediation process.

## **18. Exclusion from Liability and Indemnity**

.A. The Mediator will not be liable to a party for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under the Mediation Agreement unless the act or omission is fraudulent.

B. Each party indemnifies the Mediator against all claims by that party or anyone claiming under or through that party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under the Mediation Agreement, unless the act or omission is fraudulent.

C. No statements or comments, whether written or oral, made or used by the parties or their representatives or the Mediator within the mediation may be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

## **19. Individual Meetings during Mediation**

A. Prior to an initial mediation meeting, the Mediator may communicate privately with any of the parties to obtain an overview of the dispute, to assess the party's attitudes and needs, to teach relevant biblical principles, and to assign homework that will facilitate the mediation process.

B. The Mediator may also meet separately with any party during the course of mediation to discuss that party's attitudes, conduct, and responsibilities, or to discuss possible solutions to the dispute. As much as possible, the discussion during a private meeting will focus on the party who is present rather than on the absent party.

## **20. Mediation Proceedings**

A mediation meeting will normally include: (1) an introduction and opening prayer; (2) statements by each party clarifying the issues involved; (3) the presentation of each party's claims and defences, as well as an opportunity for the other party to respond; (4) questioning by the Mediator; (5) a discussion, sometimes in private at first, of each party's responsibility for the dispute; (6) counselling involving the application of relevant biblical principles; (7) a discussion of appropriate solutions to the dispute; (8) agreement on a solution; and (9) closing comments and prayer.

#### **21. Written Record of Agreement**

The parties (with the assistance of the Mediator) may prepare a written record of any agreement reached by the parties during mediation. That agreement will be legally binding if, and only if, the parties or their lawyers reduce it to a contract or stipulation that is signed by all parties.