

THIS AGREEMENT is made on the date specified in Schedule A.

BETWEEN

Party 1 (as the case may be) who is identified in Schedule A who is represented by the lawyer referred to in Schedule A.

and

Party 2 (as the case may be) who is identified in Schedule A who is represented by the lawyer referred to in Schedule A.

and

The **Arbitrator** who is identified in Schedule A.

Definition - Arbitration

Arbitration is a process (other than a judicial process) in which parties to a dispute present evidence and arguments to the Arbitrator, who makes a determination to resolve the dispute.

Arbitration is authorized and facilitated by the *Family Law Act 1975 (Cth)*, the *Family Law Regulations 1984* and the *Family Law Rules 2004* and may be either:

1. A **section 13E arbitration** – which is arbitration of Part VIII proceedings, or Part VIIIAB proceedings (other than proceedings relating to a Part VIIIAB financial agreement), carried out as a result of an order made under section 13E (referred to as “Court ordered arbitration”); or
2. Relevant property or financial arbitration – which is arbitration (other than section 13E arbitration) of:
 - (a) Part VIII proceedings, Part VIIIA proceedings, Part VIIIAB proceedings, Part VIIIB proceedings or section 106A proceedings; or
 - (b) Any part of such proceedings; or
 - (c) A dispute about a matter with respect to which such proceedings could be instituted.(Referred to as “**Private arbitration**”).

Agreement to Arbitrate

1. The parties to the dispute agree to submit their dispute to arbitration and for that purpose they desire to appoint the Arbitrator to hear evidence and arguments and make a determination to resolve the dispute according to law.

Appointment of Arbitrator

2. The Arbitrator is appointed on terms and conditions contained in this agreement to conduct the arbitration.
3. The parties to the dispute acknowledge that prior to the appointment of the Arbitrator, the parties and/or their lawyers met with the Arbitrator to settle the terms of this agreement and to prepare the **arbitration plan** which forms part of this agreement in **Schedule A**. The arbitration plan may be changed by consent of the parties or by the direction of the Arbitrator in order to effectively and efficiently conduct the arbitration.
4. This agreement has been entered into by the parties to the dispute with the benefit of their own independent legal advice about its effect and consequences.
5. The parties to the dispute acknowledge that, unless they otherwise agree in writing or they resolve the dispute by consent, the arbitration;
 - (a) Will proceed in accordance with the procedure set out in this agreement;
 - (b) Will result in an award which is capable of registration under the Family Law Act in the Family Court of Australia, the Federal Circuit Court of Australia or the Family Court of Western Australia (as the case may be) and, once registered, the award has the same effect as if it were a decree made by the court which can only be set aside, varied or appealed in circumstances referred to in sections 13J and 13K of the *Family Law Act*.

Role of the Arbitrator

6. The parties to the dispute acknowledge that the Arbitrator is bound by the oath of office and that adherence to that oath is a term of this agreement.
7. The Arbitrator warrants being qualified as an arbitrator within the meaning of Section 10M of the *Family Law Act* and he/she meets the prescribed requirements in Regulation 67B of the *Family Law Regulations 1984*.

8. Notwithstanding any other provision in this agreement, the Arbitrator will ensure that each party is accorded procedural fairness and that the Arbitrator will not allow himself/herself to knowingly be affected by bias.
9. The Arbitrator shall not;
 - (a) Accept any other appointment in relation to any legal proceedings between the parties and the dispute except an appointment as arbitrator to be made subsequent to the present arbitration and to be the subject of a separate agreement;
 - (b) Be called to give evidence by either party to the dispute be called to give evidence by either party to the dispute in relation to any matter raised before or during the arbitration except to give evidence in any action where this agreement is sought to be enforced or interpreted or as otherwise he/she may lawfully be required by a court to give such evidence.
 - (c) discuss any aspect of the dispute or arbitration with the lawyer of either party without informing the other practitioner of the substance of such conversation, unless such conversation is for the purpose of making administrative arrangements PROVIDED THAT if the parties have agreed to adopt a mediation procedure as part of the arbitration, this sub-clause is not breached by the Arbitrator speaking about substantive issues to any party or their lawyer in the absence of the other during such mediation procedure.
 - (d) disclose to any person who is not a party to this agreement or a lawyer practitioner or other professional advisor or witness for any party to the arbitration any information about the arbitration, the dispute, the parties to the dispute or their business or private affairs which he/she learns in the course of acting as Arbitrator, unless specifically authorised in writing by the affected party or required to do so by the operation of the law.
10. The Arbitrator shall declare any known interest in the dispute or knowledge of any party to the dispute or a witness to be called or any other matter which may reasonably affect his/her appointment as arbitrator or give the impression to a reasonable person with a knowledge and understanding of legal proceedings that he/she is not an impartial arbitrator and in the event that no declaration is made, he/she warrants that he/she is not in possession of any knowledge or information which would disqualify him/her from acting as the Arbitrator PROVIDED THAT if the Arbitrator knows or has socialised with any

professional or expert witness who customarily gives evidence in legal proceedings, the Arbitrator is relieved from the obligation to make such disclosure unless he/she is of the opinion that he/she cannot do justice between the parties if the evidence or credibility of such witness is to be challenged in the arbitration.

11. In the event that the Arbitrator makes the declaration referred to in the previous paragraph, the parties may, by agreement, waive their rights to object to the Arbitrator continuing in his/her role in which case the Arbitrator shall be entitled to enter upon or continue the arbitration.

Opt Out

12. Insert

The Cost Of Arbitration

13. The parties to the dispute shall be jointly and severally liable for the Arbitrator's fees and disbursements and the parties to the dispute may agree between themselves how those fees are to be paid.
14. If the arbitration is terminated without the delivery of an award the costs and disbursements paid to the Arbitrator shall be costs in the cause to be determined by the trial judge at the completion of any trial in relation to the dispute.
15. The Arbitrator shall be entitled to charge the following fees and disbursements (GST inclusive) which are specified in Schedule A comprised of
 - (a) a Basic Composite Fee to cover *[here insert services covered by this fee]*
 - (b) a Daily Fee.
 - (c) Travel and/or accommodation
 - (d) Room Hire
16. The Arbitrator's fees and charges are due and payable;
 - (a) 7 days from the date that the award is delivered to the parties or to the lawyers for each of the parties; or
 - (b) 7 days after the parties agree in writing, or apply to the court for orders by consent, to resolve the dispute; or

- (c) 7 days after a party opts out of the arbitration in accordance with paragraph [insert]
 - (d) Immediately upon the arbitration being suspended or terminated for any reason other than those stated in the previous two sub-paragraphs, or, the matter being referred to the court pursuant to Regulation 67K;
17. To better secure the payment of the Arbitrator's fees and disbursements each party shall
- (a) pay into a nominated trust account described in Schedule A to be held upon trust for the Arbitrator in accordance with this agreement;
 - (b) That party's share of the sum estimated for the Arbitrator's costs and disbursements in Schedule A; and
 - (c) That party's share of any additional costs and disbursements of the Arbitrator over and above that which has been estimated in the Arbitration Plan as and when the service giving rise to such costs or disbursements is performed.
18. In the event that no trust account is available for the purpose of the previous paragraph, the parties to the dispute and the Arbitrator shall make alternative appropriate arrangements to secure the Arbitrator's fees and disbursements, and such alternative arrangements shall be described in Schedule A.
19. If the parties to the dispute and the Arbitrator agree upon a venue which needs to be hired or a professionally produced transcript, the cost of the venue hire and the transcript shall form part of the total cost of the arbitration.
20. Whenever an estimate of costs or disbursements is given by the Arbitrator, such estimate shall not limit the ability of the Arbitrator to charge for actual work performed in accordance with this agreement even if the estimate turns out to be incorrect.
21. For the purpose of State Laws dealing with the disclosure and estimates of legal costs and Costs Agreements, this agreement is to be taken to be a costs disclosure and costs agreement (however those expressions may be described in the applicable legislation).

Conduct Of The Arbitration

22. The parties to the dispute shall by themselves their servants or agents comply with any direction, interim award or a reasonable request of the Arbitrator. The manner in which an arbitration may be conducted is set out in **Schedule B**.

23. Each of the parties to the dispute will cause the Arbitrator to be provided with such material as is determined by the Arbitrator to be relevant to the arbitration.
24. The parties to the dispute will behave in a civil manner towards each other and towards every other person involved in the arbitration process.
25. In the event that a procedural direction of the Arbitrator is not complied with the Arbitrator;
 - (a) may suspend the arbitration; and
 - (b) if the failure to comply exceeds 28 days, must, in the case of a Court Ordered arbitration, refer the matter to the Court that ordered the arbitration; and;
 - (c) if the failure to comply exceeds 28 days, must, in the case of a Private Arbitration, terminate the arbitration.
26. The parties to the dispute shall, unless otherwise agreed or excused by the Arbitrator, attend at the arbitration venue and remain there during the course of the arbitration hearing, including any adjourned or re-convened arbitration hearing.
27. If any party to the dispute is a body corporate it shall be represented at the arbitration hearing by an officer or other person who is authorised to compromise the dispute without reference to superior authority.
28. Each party to the arbitration may be represented by a lawyer who shall attend at and participate in the arbitration hearing. In the event of the lawyer being a barrister, that practitioner shall be bound by the terms of this agreement to the same extent as the solicitor instructing him or her is so bound.
29. The parties to the dispute (or their lawyers) shall in consultation with the Arbitrator arrange a venue for the arbitration hearing, such venue being suitable for the type of arbitration hearing which is contemplated. The cost of such venue and any ancillary services provided thereat shall be borne equally between the parties to the dispute unless otherwise agreed in writing and the venue and its cost are described in **Schedule A**.
30. Each party to the dispute hereby binds their legal personal representatives, legal practitioners, servants or agents to adhere to the terms of this agreement and to comply with any lawful direction given by the Arbitrator.

31. All communications with the Arbitrator may take place at his/her business address or by email at his/her email address. All communications with the parties to the dispute shall be via their lawyers' business addresses or via their email.

Confidentiality Of Arbitration

32. The parties to this agreement agree that the arbitration is confidential and no evidence shall be called or given by any party to the dispute of anything which took place in the course of the arbitration other than for the purpose of registering, reviewing or enforcing the award or as required by law.
33. The Arbitrator's notes, working papers, computer files and records and audio recording of any proceeding are private to the Arbitrator and no party to the dispute, their servants or agents shall be entitled to inspect, examine, copy or subpoena for production in any legal proceedings any such notes working papers computer files or recordings.
34. The parties to the dispute or their lawyers or their servants or agents shall not disclose to any person not involved in the arbitration any communication information or document flowing from the arbitration process unless such disclosure is made with the written consent of the parties to the dispute or because of the operation of the law.
35. Notwithstanding any confidentiality provisions in this agreement any party to this agreement may give such evidence with respect to the agreement, the conduct of the arbitration and any statement made in the course of the arbitration as may be necessary in any action to;
- (a) conduct any litigation about the validity of the award;
 - (b) enforce or interpret this agreement; or
 - (c) recover any fees due to the Arbitrator
36. Each party to the dispute and the Arbitrator shall be entitled to make an audio recording of the arbitration hearing upon the following terms and conditions;
- (a) Recordings shall not be made in secret. Each party to the dispute is entitled to make a private recording only upon revealing to the other parties and the Arbitrator their intention to do so;
 - (b) Any party wishing to make a recording shall be limited to the use of a dictation machine or similar device using an internal microphone. No microphones or other

recording equipment are to be set up in the hearing room without consent of all parties and the Arbitrator;

- (c) The audio 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 thereto and for no other purpose;
 - (d) Any audio recording made by the Arbitrator shall form part of the Arbitrator's private notes.
37. Upon agreement the parties to the dispute may arrange for a transcript of the proceedings to be made by a commercial transcript provider. In the event that the parties agree upon a transcript being made;
- (a) The cost of such transcript will be borne in accordance with the agreement of the parties to the dispute;
 - (b) The parties to the dispute will arrange for the Arbitrator to be provided with a copy of the transcript (including a running transcript and copy audio or video recordings, where available) in both electronic and hard copy form as soon as one is reasonably available, whereupon that material becomes the property of the Arbitrator;
 - (c) The transcript shall be confidential and shall not be used for any purpose other than to facilitate the expeditious conduct of the arbitration or any review of the award or other process in the court associated with the arbitration;
 - (d) Unless the parties to the dispute otherwise agree, the transcript and all recordings used in the making of the transcript shall be destroyed when the award is handed down.
38. Any information or document disclosed by a party to the other party or to their servants or agents pursuant to the duty of disclosure shall only be used for the purpose of the arbitration and upon the expiration of 28 days from the registration of the award each party will either;
- (a) Return all documents (including copies) belonging to or sourced from the other party or from any person who produced documents under subpoena to the owner;
 - or;

- (b) With the consent of the owner of the documents, destroy all copies of the documents.
39. All documents provided to the Arbitrator shall upon the expiration of 28 days from the registration of the award either;
- (a) Be returned to the party tendering the document; or
 - (b) With the consent of the owner of the documents be destroyed; or
 - (c) Be dealt with in a way which is agreed by the parties.

Settlement Of Dispute And Termination Of The Arbitration

40. In the event that the parties to the dispute reach agreement, they may apply to the Arbitrator for a consent award or, at their election, they may apply to the court for orders to be made by consent or enter into a Binding Financial Agreement pursuant to Part VIVA or Part VIIIAB of the Family Law Act.
41. The arbitration will come to an end when;
- (a) The Arbitrator delivers the final award;
 - (b) The parties to the dispute by written agreement terminate the arbitration;
 - (c) The parties to the dispute apply to the court for consent orders dealing with the totality of the dispute and such order is made;
 - (d) The parties inform the Arbitrator that they have entered into a binding financial agreement pursuant to Part VIVA or VIIIAB of the Family Law Act which deals with all matters in dispute;
 - (e) The Arbitrator determines that he/she must disqualify himself/herself from any further participation in the arbitration;
 - (f) The Arbitrator is incapable of continuing with the arbitration by reason of ill health, mental or physical impairment or death;
 - (g) A party to the dispute dies or becomes incapable of managing their own affairs by reason of physical or mental impairment;

- (h) A lawyer certifies in writing that, based upon medical evidence, that lawyer's client (being a party to the dispute) has lost the capacity to give instructions to any legal practitioner.
 - (i) A party opts out of the arbitration in accordance with paragraph [insert]
42. The Arbitrator shall deliver an award within 28 days after the conclusion of the last day of the arbitration hearing.
 43. When the arbitration is terminated by the delivery of a final award, if either party identifies a minor mathematical or other mistake in the award which can be cured under the "slip rule" which is applied to legal proceedings, such party may bring the matter to the attention of the Arbitrator and all other parties to the dispute. If the Arbitrator agrees that an award can be so rectified, he/she may deliver a supplementary award by which the final award is varied.
 44. To facilitate the making of a supplementary award, the terms of this agreement are revived to permit the Arbitrator to discharge his/her responsibilities.
 45. Any supplementary award delivered under the previous paragraph shall be so marked by the Arbitrator as to identify the changes made and shall contain reasons for the decision. A supplementary award will stand in the place of the original award as if it were the final award.

Exclusion Of Liability And Indemnity

46. The Arbitrator and his/her servants or agents shall not be liable to any party to the dispute for any act or omission in the performance of the Arbitrator's obligations under this agreement.
47. The parties to the dispute hereby jointly and severally indemnify the Arbitrator against any claim for any act or omission in the performance of his/her duties under this agreement howsoever arising. Without limiting the generality of the foregoing, the parties to the dispute will jointly and severally indemnify the Arbitrator for any costs and legal expenses incurred by him/her in appointing solicitors and counsel to act on his/her behalf in any proceedings arising from the arbitration or from the terms of this agreement where it is prudent or necessary for the Arbitrator to be legally represented.

48. A minor or technical breach of the obligations imposed by this agreement upon the Arbitrator shall not render the agreement voidable by any party.
49. The parties acknowledge that pursuant to Section 10P of the Family Law Act an Arbitrator has, in performing the functions of an arbitrator, the same protection and immunity as a Judge of the Family Court has in performing the functions of such a Judge.
50. Any mediation conducted in the course of the arbitration shall be part of the arbitration and this agreement shall apply to such mediation and all things done and said during such mediation as if they had been done or said during the arbitration.

Law To Be Applied

51. This agreement shall be interpreted and construed in accordance with the Family Law Act and the Family Law Regulations 1984 and the Family Law Rules 2004.
52. If any doubt arises about procedural matters the Arbitrator shall apply the Family Law Rules 2004 to resolve the issue in doubt (so long as the application of the said Rules is not inconsistent with this agreement) and for that purpose, the Arbitrator is taken to have the same power as a Judge of the Family Court applying the said Rules.
- ~~53. The parties to the dispute acknowledge and confirm that the power granted to the Arbitrator to resolve the dispute includes a power to award costs under Section 117 (2) of the Family Law Act including;
 - ~~(a) The costs of that part of the proceedings which were dealt with by the court before the matter was referred to arbitration where no costs order was made or the question of costs was expressed to be reserved to the trial Judge or generally;~~
 - ~~(b) The costs of each party in relation to the arbitration including the Arbitrator's fees and disbursements;~~
 - ~~(c) The costs of each party's legal representation (whether fixed on a party-party, solicitor own client or indemnity basis) which are properly recoverable when a costs order is made by a court.~~~~
54. 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.
55. Any substantial alterations to this agreement shall be evidenced in writing signed by all the parties to the agreement.

56. All Schedules to this agreement are incorporated herein and form a part of this agreement.

Legal Advice

57. The parties to the dispute acknowledge that prior to entering into this agreement they received independent legal advice from their own lawyers about the terms and effect of this agreement and about the nature and extent of their rights and obligations hereunder, or, one or both of the parties to the dispute were advised by the Arbitrator to seek such independent legal advice and have decided not to do so.

58. Where any act under this agreement or in the arbitration is to be performed by a lawyer for a party to the dispute that party warrants and acknowledges that they have authorised their lawyer to carry out such act and they will be bound thereby.

59. The parties to this agreement have signed this agreement and agreed to be bound by its terms.

SIGNED by the said Arbitrator	
In the presence of	
SIGNED by the said Party 1	
In the presence of	
SIGNED by the said Party 2	
In the presence of	

ARBITRATION AGREEMENT – SCHEDULE A

<u>Para No.</u>	<u>Description</u>	<u>Details</u>
	Date of Agreement	
	Party 1: Name	
	Party 1: Address	
	Party 1: Lawyer	
	Party 1: Lawyer contact details	
	Party 2: Name	
	Party 2: Address	
	Party 2: Lawyer	
	Party 2: Lawyer contact details	
	Arbitrator: Name	
	Arbitrator: Contact details	
	Type of Arbitration	Court Ordered / Private Arbitration
15(a)	Basic Composite Fee	
15(b)	Daily Fee	
15(c)	Travel / accom fee	
15(d)	Room hire	
17(a)	Nominated Trust Account	
18	Alternative arrangements to secure Arbitrator's fees	

ARBITRATION PLAN – SCHEDULE A

ARBITRATION PLAN	
Outline of issues in dispute	Determination of an adjustment of property between the parties where valuation of assets is not in dispute.
Type of arbitration	On the papers / The parties Opt Out of section 117
Date of Arbitration Hearing	14 days from Arbitration Agreement
Venue	Inns of Court Mediation and Arbitration Centre, Level 5 Inns of Court, Turbot Street Brisbane or other venue if oral submissions
Daily Cost of Venue	Arbitrator to absorb as part of Basic Fee
Application of rules of evidence (Reg 67O)	No
Transcript	No
Cost of Transcript	Nil
Date for Compliance with Preliminary Directions	7 days from Arbitration Agreement or as otherwise specified in the Preliminary Directions
Estimated time needed for the arbitration if oral submissions	Half day (9am to 12:30)
Estimated Total Arbitrator's Costs and Disbursements	\$3,300 inclusive of GST

PRELIMINARY DIRECTIONS – SCHEDULE A

No	Direction	Time (All times are close of business on the date specified)
60.	That the parties exchange Lists of Documents required to be disclosed in accordance with the List of Disclosure	2 business days from date of Arbitration Agreement
61.	That the documents on the lists so exchanged (a) Be provided for inspection and copying; or (b) If not available, an explanation be provided for the unavailability	At a time not less than 7 days before the Arbitration Hearing
62.	That the parties; (a) Agree on the value of any asset; (b) Agree on a single expert to value such asset	4 business days from the date of the Arbitration Agreement The pool of assets is attached to this Arbitration Agreement
63.	That the parties exchange and provide to the Arbitrator an Agreed Statement of Relevant Facts	No less than 7 days before the Arbitration Hearing
64.	<u>To the extent that a relevant fact is in dispute</u> , that Party 1 deliver to the arbitrator and Party 2 all affidavits, (a) a statement of financial circumstances or a statement of evidence in chief upon which he/she relies; and (b) a memorandum including an outline of what award he/she seeks, what findings should be made by the arbitrator, a brief chronology and a list of assets and liabilities that he/she proposes retaining;	No less than 5 business days before the Arbitration Hearing

65.	<p><u>To the extent that a relevant fact is in dispute</u>, that Party 2 deliver to the arbitrator and Party 1 all affidavits,</p> <p>(a) a statement of financial circumstances or a statement of evidence in chief upon which he/she relies; and</p> <p>(b) a memorandum including an outline of what award he/she seeks, what findings should be made by the arbitrator, a brief chronology and a list of assets and liabilities that he/she proposes retaining</p>	No less than 4 business days before the Arbitration Hearing
66.	That Party 1 and Party 2 exchange proposed draft Award (Order) sought indicating areas of agreement and dispute.	No less than 2 business days before the Arbitration Hearing
67.	That an arbitration hearing take place at the (Venue) at which any evidence or cross-examination which may be necessary can be heard and submissions (written or oral) may be provided.	Date of Arbitration Hearing

Manner in which the Arbitration May be Conducted – Schedule B

1. **A fully contested hearing** at which the arbitrator acts as if he/she were a Judge of the court and the hearing is conducted as if it was a hearing in court with the application of the applicable Rules of Court (with the arbitrator having the right to vary or dispense with the operation of such rules); or
2. **A modified fully contested hearing** where the procedure is modified so that the arbitrator may;
 - (a) actively direct, control and manage the conduct of the arbitration;
 - (b) seek to limit the issues by suggesting to the parties to the dispute that concessions on the evidence or matters of practice and procedure may be appropriately made;
 - (c) conduct a hearing and deliver an award on a single issue with such award forming a part of the final award, if necessary;
 - (d) give directions about the matters in relation to which the parties are to present evidence;
 - (e) give directions about who is to give evidence in relation to each issue in dispute;
 - (f) give directions about how evidence is to be given and in particular;
 - (g) that particular evidence is to be given orally;
 - (h) that particular evidence is to be given by affidavit or a sworn statement;
 - (i) the order in which evidence is to be given including any evidence in reply;
 - (j) that evidence in relation to a particular matter not be presented by a party to the dispute;
 - (k) that evidence of a particular kind not be presented by a party to the dispute;
 - (l) limiting the time for the giving of evidence;
 - (m) limiting cross-examination of a particular witness or all witnesses in general;
 - (n) limiting the number of witnesses who are to give evidence in the arbitration.

- (o) if the arbitrator considers that expert evidence is required—give directions about:
 - (i) the matters in relation to which an expert is to provide evidence; and
 - (ii) the number of experts who may provide evidence in relation to a matter; and
 - (iii) how an expert is to provide the expert's evidence;
- (p) ask questions of, and seek information or the production of evidence from, parties, witnesses and experts (whether they are formally giving evidence or not) on matters relevant to the arbitration;
- (q) give general directions about practice and procedure with a view to ensuring that the proceedings are not protracted and the costs to the parties to the dispute are minimised and are proportional to the matters in issue;
- (r) with the consent of both parties (which consent is signified by the inclusion of this sub-clause in this schedule) dispense with the operation of the rules of evidence, the Evidence Act 1995 (Commonwealth) and inform himself/herself of matters relevant to the dispute by such means as he/she considers appropriate;
- (s) seek answers to questions (whether orally or in writing) at any time from either or both parties on any issue which appears relevant to the arbitrator;
- (t) give directions about the use of written submissions including directions about:
 - (i) length of written submissions;
 - (ii) limiting the time for oral argument;
 - (iii) time allowed for written submissions
 - (iv) the order in which submissions will be prepared
- (u) with the consent of all parties, suspend the arbitration at any time and conduct;
- (v) a mediation of the dispute in accordance with paragraph 9(c) of the Agreement and 5(m) of this Schedule without thereafter being disqualified from continuing with the arbitration if the mediation does not result in a settlement; or;

3. An arbitration on the papers where;

- (a) The parties agree upon all relevant facts; and
 - (b) The arbitrator is asked to prepare an award upon the acceptance of the agreed facts;
or
4. **A combination of the above, with the parties agreeing upon the elements of the practice and procedure in the arbitration plan.**

Powers of the Arbitrator

5. The Arbitrator may do any of the following things;
- (a) meet with the parties to the dispute in the presence of their legal practitioners;
 - (b) adjourn any arbitration hearing and set a date for the resumption of the hearing;
 - (c) meet with the legal practitioners for the parties in the absence of the parties for the purpose of making administrative arrangements and making procedural directions;
 - (d) pursuant to section 34 of the Acts Interpretation Act (1901), administer the oath to any witness who gives evidence in the arbitration and to accept any evidence contained in an affidavit or statement sworn for the purpose of the arbitration or any court proceedings;
 - (e) make interim awards in relation to any matter of practice and procedure including but not limited to;
 - (i) production of documents;
 - (ii) interim costs including security for costs;
 - (iii) arbitration funding awards;
 - (f) with the consent of the legal practitioners, speak with either party during a hearing otherwise than in the course of that party giving evidence;
 - (g) take into account anything said by either party during the arbitration (whether that party was under oath or not and whether the statement is made in the course of giving evidence or otherwise) or any conduct witnessed by the arbitrator which is relevant to the determination of the dispute;

- (h) meet or otherwise communicate with the parties' legal practitioners at any time in order to;
 - (i) make administrative arrangements for the effective conduct of the arbitration;
 - (ii) deal with applications for adjournment, extension of time or other minor procedural matters;
 - (iii) vary the manner in which the arbitration is to be conducted;
- (i) direct who can be present from time to time at the venue where the arbitration is conducted and who can be present in the arbitration hearing room from time to time (provided that nothing in this sub-paragraph shall authorize the exclusion of any party to the dispute or their legal practitioners without their consent);
- (j) inspect any documents forming part of the court record in proceedings commenced in any court by the parties to the dispute or either of them provided that he/she shall identify all documents so inspected to both parties and afford them an opportunity of inspecting same;
- (k) conduct any view as may be agreed to be necessary by the parties to the dispute or which the arbitrator determines to be necessary after hearing submissions from each party to the dispute on that issue;
- (l) express a preliminary opinion or view about the likely outcome of the arbitration or a part thereof without thereafter having to disqualify himself/herself from further hearing the arbitration;
- (m) with the consent of the parties to the dispute, suspend the arbitration for the purpose of permitting the parties to the dispute to resolve the dispute or any part thereof by consent through mediation or otherwise and in particular the arbitrator is entitled (without entering into a separate mediation agreement);
 - (i) act as a mediator when the arbitration is suspended to assist the parties in reaching an agreement on how the dispute or any part thereof should be resolved;

- (ii) to conduct private discussions with each party in the presence of their legal practitioners and seek from each party their best offer of compromise;
 - (iii) if the issue to be resolved involves two witnesses compromising a question of valuation or other such expert evidence, to conduct private discussions with each witness in the presence of the legal practitioner for the party calling such witness and seek to attain a compromise of the conflict;
 - (iv) inform the parties of any preliminary views he/she has formed about the possible outcome of the arbitration or any part thereof;
 - (v) to resume the arbitration if a resolution does not appear possible or likely without being called upon to disqualify himself/herself for any alleged bias;
 - (vi) hear and determine any application for him to disqualify himself/herself from further acting as the arbitrator;
 - (vii) terminate the arbitration if he/she is of the opinion that notwithstanding his/her ability to put matters out of his/her mind it is not possible for him/her to continue with the arbitration unaffected by bias.
- (n) invite the parties at any time during the arbitration to modify in writing the terms of this agreement or enter into an arbitration agreement with any other person pursuant to the Commercial Arbitration legislation of the State where the arbitration is taking place in order to better facilitate the efficient conduct of the arbitration and resolve all issues raised by the dispute;
- (o) conduct a hearing and make an interim award on any specific issue which can be decided before the making of a final award;
- (p) continue with the arbitration on an undefended basis and proceed to make an award if, after a mediation pursuant to sub paragraph m. hereof, one party decides not to participate further in the hearing;

- (q) continue with the arbitration on an undefended basis and proceed to make an award if a court confronted with similar facts and circumstances would proceed on an undefended basis.
- (r) Make a costs award at any stage of the proceedings upon such terms and conditions as he/she considers appropriate having regard to the matters contained in section 117 of the Family Law Act, save where the parties have specifically opted out of section 117.