

# Agreement to Facilitate

Date: 13 May 2016

## Interested Persons:

- (1) Aaron Fry and Glenn Foard of Melba Support Services
- (2) Kerrie Lecluse, Michael Pratt and Sharon Leahy
- (3) Bruce and Wendy Drinkwater

("the Interested Persons")

Facilitator: David Sharrock

("the Facilitator")

of Suite 2, 40 Montclair Avenue, Glen Waverley, Victoria

## Recitals:

- A. Melba Support Services ("Melba") provides support to individuals with a disability and to their families.
- B. The other Interested Persons are the relatives respectively of two adult ladies, namely Vanessa Leahy and Catherine Drinkwater ("Vanessa and Catherine") who both have a disability.
- C. The Vanessa and Catherine are to share accommodation and certain issues have arisen involving them and the Interested Persons in respect to their care and accommodation ("the Issues");
- D. The Interested Persons have requested the Facilitator, and the Facilitator has agreed, on the terms and conditions of this Agreement to assist the Interested Persons in their attempts to resolve the Issues.

## Agreement

### The Facilitation

1. "The Facilitation" will comprise all steps taken to attempt to resolve the Issues by Facilitation, whether prior or subsequent to the execution of this Agreement.

### Appointment and functions of the Facilitator

2. The Interested Persons appoint the Facilitator and the Facilitator accepts the appointment to facilitate agreement as to the Issues in accordance with the terms of this Agreement.
3. The Facilitator will assist the Interested Persons to identify the issues between them and to explore options for and, if possible to achieve, the expeditious resolution of the Issues by agreement between them.
4. The Facilitator will not advise an Interested Person, nor make decisions for, nor impose a solution on, the Interested Persons.
5. The Facilitator will not, unless the Interested Persons agree in writing to the contrary, obtain from any independent person any advice or opinion as to any aspect of the

Issues. Any such advice or opinion will be obtained only from such person or persons as may be agreed by the Interested Persons.

6. The Facilitator confirms that the Facilitator has no interest in the Issues and nor has the Facilitator had any prior dealings with any of the Interested Persons in relation to the Issues.
7. If in the course of the Facilitation the Facilitator becomes aware of any circumstances that might reasonably be considered to affect the Facilitator's capacity to act impartially, the Facilitator will, to the extent that the Facilitator may properly do so, immediately inform the Interested Persons of those circumstances. The Interested Persons will then confer and the Facilitator will continue to participate in the Facilitation if the Interested Persons so agree.
8. If, after consultation with the Interested Persons, the Facilitator forms the view that the Facilitator will be unable to assist the Interested Persons to achieve resolution of any of the Issues, then the Facilitator may terminate the appointment as Facilitator by giving written notice to the Interested Persons of that termination.

### **Co-operation, Costs and Facilitator's Fees**

9. The Interested Persons agree to participate in the Facilitation.
10. Each Interested Person will comply with reasonable requests made by the Facilitator to promote the efficient and expeditious resolution of the Issues.
11. **Meiba** will pay the fee of the Facilitator on behalf of the Interested Persons, as specified in schedule 1.
12. In the event that the Facilitation continues beyond a half day, as specified in Schedule 1, additional fees at the hourly rate specified in Schedule 1 are payable by **Meiba** direct to the Facilitator at the time of completion of the Facilitation. The hourly rate is payable in full for any hour or part thereof.
13. A tax invoice and receipt will be forwarded by the Facilitator to the Interested Persons after the Facilitation.

### **Authority and Representation**

14. The family members who are Interested Persons have the right and authority respectively to represent the interests of **Vanessa** and **Catherine** to enter into this Agreement to Facilitate on their behalf, and to sign any agreement that may result from the Facilitation.

### **Conduct of the Facilitation**

15. The Facilitation, including all preliminary steps, shall be conducted in such manner as the Facilitator considers appropriate having due regard to the view of each Interested Person as to the manner in which the Facilitation should be conducted.

### **Communication between the Facilitator and an Interested Person**

16. The Facilitator may communicate with an Interested Person or the Interested Persons orally or in writing.
17. The Facilitator may, as frequently as the Facilitator deems appropriate, meet with the Interested Persons together or separately.

18. Information, whether oral or written, disclosed in confidence by an Interested Person to the Facilitator need not be disclosed by that Interested Person, and may not be disclosed by the Facilitator to any other Interested Person, unless the Interested Person by whom that information was disclosed consents to such disclosure.

### **Confidentiality**

19. The Interested Persons and the Facilitator will not, unless required by law to do so, disclose to any person not present at the Facilitation, nor use, any confidential information furnished during the Facilitation unless such disclosure is to obtain professional advice or is to a person within that Interested Person's legitimate field of intimacy, and the person to whom the disclosure is made is advised that the confidential information is confidential.

### **Privilege**

20. Subject to Clause 19, in any arbitral or judicial proceedings the following will at all times be kept confidential and will be privileged, and the Interested Persons and the Facilitator will not disclose, nor rely upon them, nor issue nor cause to be issued any subpoena to give evidence or to produce documents concerning them:
  - (i) any settlement proposal;
  - (ii) the willingness of an Interested Person to consider any such proposal;
  - (iii) any statement, admission or concession made by an Interested Person; and
  - (iv) any statement or document made by the Facilitator.

### **Termination**

21. An Interested Person may at any time terminate the Facilitation by giving written notice terminating the Facilitation to each Interested Person and to the Facilitator.
22. In the absence of notice by an Interested Person terminating the Facilitation, the Facilitation will be terminated only upon execution of a written settlement agreement in respect to the Issues. Such settlement agreement will be drawn up and executed at the earliest possible time after the terms of settlement have been agreed upon.

### **Agreement**

23. Should the issues be resolved at the Facilitation, then such agreement will be reduced into writing, signed by all the Interested Persons and be binding upon all of them.
24. The Facilitator will not advise or act for any of the Interested Persons in any future dispute about the accommodation issues.
25. The Interested Persons will not do anything to cause the Facilitator to breach Clause 20.

### **Exclusion of Liability and Indemnity**

26. The Facilitator will not be liable to an Interested Person for any act or omission by the Facilitator in the performance or purported performance of the Facilitator's obligations under this Agreement unless the act or omission is fraudulent.



# Execution Page for Facilitation Agreement

**Interested Persons:**

**SIGNED** by **Kerrie Lecluse** in the presence of:

.....  
Signature of witness

**DAVID SHARROCK**  
Name of witness (block letters)

.....  
Signature

**SIGNED** by **Michael Pratt** in the presence of:

.....  
Signature of witness

**DAVID SHARROCK**  
Name of witness (block letters)

.....  
Signature

**SIGNED** by **Sharon Leahy** in the presence of:

.....  
Signature of witness

**DAVID SHARROCK**  
Name of witness (block letters)

.....  
Signature

**SIGNED** by **Bruce Drinkwater** and **Wendy Drinkwater** in the presence of:

.....  
Signature of witness

**DAVID SHARROCK**  
Name of witness (block letters)

.....  
Signature

**SIGNED** by **Aaron Fry** in the presence of:

.....  
Signature of witness

**DAVID SHARROCK**  
Name of witness (block letters)

.....  
Signature

**SIGNED** by **Glenn Foard** in the presence of:

.....  
Signature of witness

**DAVID SHARROCK**  
Name of witness (block letters)

.....  
Signature

**Facilitator:**

**SIGNED** by **David Sharrock** in the presence of:

.....  
Signature of witness

.....  
Name of witness (block letters)

.....  
Signature of **David Sharrock**