

AGREEMENT FOR MEDIATION

Between:

(1)

..... **(Party 1)**

(2)

..... **(Party 2)**

being the parties to the dispute, collectively known as "the parties",

-and-

(3)

..... **(Mediator)**

PARTIES AGREEMENT TO MEDIATE

We, the parties and the Mediator, agree that the mediation shall be conducted on the following terms and conditions:

1. Terms and Conditions

1.1 The parties and the Mediator agree that these terms and conditions shall be deemed to apply to the mediation of the dispute notwithstanding the absence of any one or more signatures to the agreement.

2. Appointment of the Mediator

2.1 The parties agree to the appointment of the Mediator, and the Mediator accepts the appointment to mediate the dispute under the terms of this agreement.

3. Role of the Mediator

3.1 The parties acknowledge that the Mediator is independent and neutral and that the Mediator does not give legal advice.

3.2 The parties also understand that the role of the Mediator is to facilitate settlement of the dispute by negotiation and agreement, where it is possible, and that the Mediator will not adjudicate the dispute.

3.3 Any notes of the Mediator are confidential to the Mediator and shall not be available to the parties at any time, nor subject to subpoena for production as evidence in any court, tribunal or other judicial hearing or proceeding.

- 3.4 The Mediator confirms that he is fully conversant with mediation and undertakes to act in the best interests of the parties in attempting to facilitate the resolution of their dispute.

4. Venue and Date

- 4.1 The mediation will take place on the date and time agreed between the Mediator and the parties to be confirmed in writing, and at a venue with three rooms to be arranged by the parties and will continue, until terminated in accordance with clause 10, on such other days as the parties and the Mediator agree.
- 4.2 If the mediation is being conducted at the premises of a party or their representatives, then the parties will make whatever arrangements are required and advise the Mediator accordingly. The parties acknowledge and agree that any costs for alternative arrangements shall be the responsibility of the parties.

5. Fees, costs and expenses

- 5.1 The parties shall share equally, and shall be liable jointly and severally for, the Mediator's fees and expenses and all the other costs of the Mediator, including Value Added Tax when appropriate, as described in Appendix 2.
- 5.2 The parties and the Mediator acknowledge and agree that all fees falling due to the venue provider ("the Venue Provider") are to be paid by the parties.
- 5.3 The parties and the Mediator acknowledge and agree that the Mediator shall be under no liability to the Venue Provider in respect of any fees falling due to the Venue Provider.
- 5.4 The timing for payment of those fees, expenses and other costs are set out in Appendix 2.
- 5.5 Unless otherwise specified in any settlement agreement reached at mediation, the parties shall bear their own costs of preparation for, participation in, and representation at, the mediation.
- 4.3 Additional charges shall be payable by the parties in respect of:
- 4.3.1 Overtime beyond the agreed times confirmed Appendix 2 between the Mediator and the parties, calculated at the Mediator's hourly rate plus any extraordinary travel expenses of the Mediator which may be incurred due to the lateness of the hour.
 - 4.3.2 Additional preparation time by the Mediator occasioned by cancellation or adjournment by a party, to be calculated at the Mediator's hourly rate.
 - 4.3.3 Any agreed expenses of the Mediator;

4.3.4 Any incidental expenses, including venue hire, refreshments, and any other disbursements incurred by the Venue Provider.

4.3.5 Any costs, charges and expenses incurred in enforcing the payment of any fees or additional sums which shall be payable on demand entirely by the party in default.

6. Procedures

6.1 The parties may be represented if they wish, but legal representation is not a requirement. Where a party is not legally represented, it is recommended that such party take out independent legal advice before, during and after the mediation and prior to finalising any agreement reached pursuant to the mediation.

6.2 No other person shall attend the mediation without the consent of the parties and the Mediator.

6.3 It is acknowledged that the Mediator will not offer legal advice or act as legal advisor for any of the parties nor will he analyse or protect any party's legal position or rights.

6.4 The parties may agree and prepare a mediation brief providing the information set out in Appendix 1. Each party may also prepare a confidential brief to the Mediator which will not be disclosed to the other party.

6.5 Whilst it is recognised that mediation is a voluntary process and the Mediator will not, and cannot, compel the parties to settle, nor even to continue the mediation, the parties agree to participate in good faith with the aim of achieving settlement.

6.6 The parties agree that they will have present at the mediation such people as are authorised to agree settlement terms, or ensure that they themselves have such authority.

6.7 There shall be no recording or stenographic record of the mediation.

7. Exclusion of liability

7.1 The Mediator shall not be liable to a party for any act or omission (whether negligent, misleading or otherwise) in the performance (or purported performance) of the obligations under this agreement.

7.2 The parties together and separately indemnify the Mediator against all claims arising out of, or in any way connected with, any act or omission by the Mediator in the performance (or purported performance) of the obligations under this agreement.

7.3 Clause 7.1 and clause 7.2 shall not exclude any liability for fraud by the Mediator.

7.4 This agreement may be produced and relied upon as a defence to any claim arising out of the mediation made against the Mediator.

8. Confidentiality

- 8.1 The parties recognise that the mediation is for the purpose of attempting to achieve a negotiated settlement and as such all information provided during the mediation is without prejudice and will be inadmissible in any litigation or arbitration of the dispute.
- 8.2 Evidence which is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation.
- 8.3 The parties will not subpoena or otherwise require the Mediator to testify or produce records, notes or any other information whatsoever in any future or continuing proceedings.
- 8.4 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose the fact that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the dispute of that fact, save as otherwise may be required by statute or statutory instrument.
- 8.5 All documents, statements, information and other material produced prior to or during the course of the mediation, save to the extent that these documents have been disclosed already and are in the domain of the litigation, whether in writing or orally, shall be held in confidence by the parties and shall be used solely for the purposes of the mediation, save as otherwise may be required by statute or statutory instrument.
- 8.6 Upon the termination of the mediation all such material shall be returned to the originating party or forthwith destroyed at their option.
- 8.7 The parties agree that the Mediator may be accompanied at the mediation by a trainee or secretary of the Mediator.

9. Privilege

Subject to clauses 7, 8, 11 and 12 the entire process of mediation is, and all communications prior to and during mediation, including all documents and statements that are produced for, used in or made available for the mediation, and are not otherwise available, known or subject to other obligations of disclosure are, privileged and shall not be used for any collateral or ulterior purpose or be disclosed in, used for or relied on, or be the subject of a summons to give evidence or to produce documents, in any arbitral or judicial proceeding in respect of the disputes covered by this agreement.

10. Termination

- 10.1 The mediation will terminate if the parties agree that it should not continue.
- 10.2 If a party withdraws from the mediation, the Mediator shall terminate the mediation insofar as it relates to that party, and may terminate the mediation for both parties.
- 10.3 The Mediator may adjourn or terminate the mediation if:

- (a) after consultation with the parties, the Mediator feels unable to assist the parties to achieve resolution of the disputes; or
 - (b) the Mediator receives confidential information relevant to the disputes, or any party, from a source outside the mediation; or
 - (c) the Mediator considers it appropriate for any other reason.
- 10.4 The Mediator does not have to give the parties reasons for adjourning or terminating the mediation.
- 10.5 The mediation shall be terminated on execution of a settlement agreement in respect of the disputes.
- 10.6 The Mediator may continue to assist the parties to reach resolution of the disputes after termination of the mediation.
- 10.7 Termination of the mediation does not terminate clauses 7-14.

11. Settlement

- 11.1 The parties agree that any settlement reached in the mediation will not be legally binding unless and until written and signed by the parties or their representatives.
- 11.2 If the mediation has been ordered by a court, the parties shall advise the court of the outcome of the mediation, if they are required to do so by the Court Rules.

12. Enforcement

If one or more of the disputes covered by this agreement are settled, either party may:

- (a) enforce the terms of the settlement agreement for those disputes by judicial proceedings; and
- (b) cite evidence of, and incidental to, the settlement agreement in such proceedings (other than matters which are confidential or privileged under clause 8 or clause 9.)

13. Human Rights

- 13.1 The parties agree and acknowledge that the referral of this dispute to mediation does not affect the rights that may exist under Article 6 of the European Convention on Human Rights, and that if the dispute is not settled by mediation, the parties right to a fair trial remain unaffected.

14. Law and Jurisdiction

- 14.1 This agreement shall be governed by, construed and take effect in accordance with English Law.
- 14.2 The Courts of England and Wales shall have exclusive jurisdiction to settle any claim or dispute which may arise out of or in connection with the mediation.

Signatures of the parties

Name of Party 1

Signed

Date

Name of Party 2

Signed

Date

For and on behalf of the Mediator:

Name

Signed

Dated

APPENDIX 1

Mediation Brief

An individual or an agreed mediation brief will be helpful and is usually expected by the Mediator. It should contain the following information:

1. An outline of the facts giving rise to the disputes;
2. The issues to be mediated;
3. Factual submissions in relation to issues;
4. Expert reports in support of a party's position;
5. The suggested manner as to how the dispute should be resolved;
6. A bundle of the key documents, pleadings and orders; and
7. Any case law, regulations, etc. relied upon.

Mediation day

The mediation will probably start with a short presentation by each side of its case to the Mediator and the other party.

Each party should be prepared to make a brief oral statement explaining their perspective.

During the mediation the Mediator will probably speak to the parties separately in order to improve the Mediator's understanding of each party's views and to facilitate the Mediator in expressing each party's viewpoint to the other side.

The Mediator then shuttles from one room to the other, exploring the avenues for settlement.

Information given to the Mediator during such private talks will be treated by the Mediator as being confidential unless the Mediator is specifically authorised by that party to disclose it.

If the parties are able to reach a solution, then a document is drawn up and signed by both parties.

APPENDIX 2

COSTS OF THE MEDIATION

- 1.1 The Mediator's hourly charge rate is £350, plus VAT (if applicable). However, where the Mediator is appointed for at least a full day of seven hours, the Mediator's rate will be discounted by £250, giving a daily charge rate of £2,200, plus VAT (if applicable).
- 1.2 Both parties to bear the costs equally of any outgoings incurred during the mediation, including the venue hire and refreshments.
- 1.3 In the event that the mediation should last longer than the time agreed in paragraph 1.1, then any additional work carried out by the Mediator will be subject to the Mediator's hourly rate of £350.00, plus VAT (if applicable).