

## AGREEMENT TO MEDIATE

A dispute has arisen between the following persons, who will be referred to herein as “the Parties”:

(insert name) of [present address]

(insert name) of [present address]

### 1. PARTICIPANTS

1.1. The Parties have agreed to meet in an attempt to try to settle the dispute by way of Mediation in the presence of Peter Webster (“the Mediator”). It is hoped that the mediation will allow the Parties to:

- 1.1.1 understand each other better;
- 1.1.2 attempt to settle this dispute; and
- 1.1.3 avoid the development of any further disputes between the Parties in the future.

1.2. Each representative in signing this Agreement is deemed to be agreeing to the provisions of this Agreement on behalf of the Party he/she represents and all other persons present or involved on the Party’s behalf in the Mediation. All those attending the Mediation will be required to sign the confidentiality undertaking in the Schedule to this Agreement.

1.3. Each of the Parties shall notify the Mediator of every person attending on its behalf, 5 working days before the date of the Mediation. The Mediator will share this information with the other Party(s). At least one member of each party must have full authority to settle the dispute if settlement is agreed between them.

1.4. All the Parties may have their own legal representation at the Mediation for the purpose of seeking legal advice on any matter that arises in the Mediation meeting(s). Legal representatives should be aware that, where appropriate, a significant portion of time will be spent exploring the background as well as the legalities of the dispute. However, a party does not require legal representation at the Mediation if they choose not to be so represented.

1.5. The Mediator may be assisted by a Co – Mediator or Assistant Mediator. The presence of this person will not incur any additional cost for the Parties.

### 2. PREPARATION FOR THE MEDIATION

2.1. The Parties will confirm the availability of a suitable venue at least 5 working days before the Mediation date and shall be responsible jointly and severally for the cost of that venue.

2.2. Prior to the Mediation, the Mediator may communicate with the Parties for the purposes of ensuring that:

- 2.2.1 there is a proper understanding of each Party’s position;
- 2.2.2 appropriate arrangements have been made for the Mediation itself; and
- 2.2.3 the best use of the Mediation time is made.

2.3. Each Party is requested to prepare, prior to the Mediation, a concise summary of its position (the Position Statement) together with a file of documents it feels essential for the Mediator to read in conjunction with the Position Statement.

2.4. Each Party may provide the Mediator with documents or other information not provided to the other Party either prior to or during the Mediation. The Mediator will **not** disclose any such confidential documents or verbal communication to the other Party unless expressly authorised to do so by the relevant Party. The disclosing Party must make it clear to the Mediator that these documents have not previously been disclosed to the other Party.

- 2.5. All parties must disclose all documents which they seek to rely upon on in the Mediation at least 3 working days prior to any meeting of the Parties taking place.
- 2.6. The Parties must ensure that their representatives have full authority to settle at the Mediation and that they have brought acceptable methods of payment (if appropriate) with them to the Mediation.

### **3. THE MEDIATION**

- 3.1. The Mediation will take place **on [X]day Y<sup>th</sup> Z 201[2] at [address] and is scheduled to start at (insert time).**
- 3.2. During the Mediation, the Mediator may meet with each Party (or some or all of their representatives) alone in private meetings or together with the other Party (or some or all of its representatives) in joint meetings. The Mediator will meet in private meetings and joint meetings as frequently as the Mediator considers appropriate.
- 3.3. The Parties, their representatives and the Mediator may make brief notes of what is said in the Mediation. Such notes must be kept confidential at all times and cannot be reproduced for use in litigation. No transcript or other recording of the Mediation shall be made.
- 3.4. Any Party may terminate its involvement in the Mediation at any time, but only after discussing such an intention with the Mediator and allowing the Mediator to give such notice to any other Party.
- 3.5. Should the Mediator at any time conclude that continuing the Mediation is unlikely to be beneficial to the Parties, the Mediator may, after consultation with each Party, bring the Mediation to a close earlier than anticipated.
- 3.6. If settlement of most or all of the issues between the Parties can be agreed, then the Heads of Agreement must be written and all Parties must sign this Agreement to evidence their consent to such terms. Such an Agreement will necessarily include which Legal Representative(s) will be responsible for formalising this Agreement for the purpose of requesting a Court or Tribunal to make an Order to enforce the agreed terms.
- 3.7. If settlement is not reached but the Parties agree to try to continue to resolve the dispute by way of Mediation, the Mediation will be adjourned to a date and venue convenient to the Parties and the Mediator.

### **4. CONFIDENTIALITY**

- 4.1. Any information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation, will be kept confidential unless:
  - 4.1.1 All Parties consent to the disclosure; or
  - 4.1.2 The Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or
  - 4.1.3 The Mediator reasonably considers that there is a serious risk of his/her being subject to criminal proceedings unless the information in question is disclosed.
- 4.2. Each party to the Mediation may disclose the fact of the Mediation and all information arising out of, or in connection with, the Mediation to their respective legal/professional advisers or insurers and/or as required by law.
- 4.3. All information arising out of or in connection with the Mediation will be without prejudice privileged and not admissible as evidence or disclosable in any current or subsequent

litigation or other proceedings whatsoever unless it would otherwise have been admissible and disclosable by either Party in any such litigation or proceedings.

- 4.4. None of the Parties to the Mediation Agreement will call the Mediator as a witness in any litigation or other proceedings whatsoever arising from or in connection with the matters in issue in the Mediation. The Mediator will not voluntarily act in any such capacity without the written agreement of all the Parties.
- 4.5. Should a Party, notwithstanding Clause 4.4 above, seek to call the Mediator to give evidence or produce documents, that Party will indemnify the Mediator in respect of any costs or time spent in dealing with the application at a rate of £300 per hour pro rata.

## **5. CONDUCT**

- 5.1. By signing this Agreement, the Parties unequivocally agree that they will not:
  - 5.1.1 engage in any malicious, deliberately offensive or threatening language or behaviour; or
  - 5.1.2 interrupt each other whilst talking throughout the Mediation.If this does happen, the Mediator reserves the right to stop the Mediation temporarily or indefinitely.

## **6. MEDIATION FEES**

- 6.1. The Mediation fee will be borne equally by the Parties, unless otherwise agreed between the Parties.
- 6.2. The fee payable for this Mediation has been agreed to be £X,000.00 plus £Y00.00 VAT. This fee covers all the Mediator's preparation time, travel time and attendance at the Mediation for Z hours. This payment should be paid once the date for the Mediation has been arranged and/or the Agreement to Mediate has been signed. In any event the fee must be received by the Mediator at least 5 working days prior to the date fixed for Mediation.
- 6.3. Should the mediation last longer than the agreed time, each additional hour or part thereof will be charged at £X/2Z plus VAT per Party and invoiced after the Mediation.
- 6.4. If the Mediation is cancelled by either or both of the Parties, a cancellation fee will be charged as follows:
  - 6.4.1 A minimum payment of £300, if cancellation occurs any time after the Mediation date has been agreed with both (all) parties to the dispute;
  - 6.4.2 £300 or 50% of the Mediation fee (whichever is the greater) if the cancellation occurs less than five clear working days before the date agreed for the Mediation;
  - 6.4.3 The whole Mediation fee will be charged if the cancellation occurs less than two clear working days before the date and time agreed for the Mediation;
  - 6.4.4 No cancellation fee will be charged if the Mediation date simply has to be rescheduled to an alternative date, provided that the Mediation takes place within 28 days of the original Mediation date, failing which the Mediator may treat the adjournment as if it were a cancellation in accordance with the above provisions;
  - 6.4.5 If the Mediation fee has already been paid by both/all Parties at the time the Mediation is cancelled, the Mediator will refund the Mediation fee less any cancellation charge;
  - 6.4.6 The cancellation date will be determined by the date when the Mediator is contacted by one Party, or both or all Parties, by either email or telephone;
  - 6.4.7 If the cancellation of the Mediation is agreed by both/all Parties, the Parties shall equally share the applicable cancellation payment. However, if the decision is made unilaterally, the party cancelling the Mediation shall be liable for the whole cancellation payment.

6.5 No refund will be granted if the Mediator has to terminate the Mediation meeting earlier than anticipated on the grounds of inappropriate conduct by either or both parties, or if the Mediation concludes earlier than expected.

**7. EXCLUSION OF LIABILITY**

7.1. The Mediator shall not be liable to the Parties for any act or omission in connection with the services provided in or in relation to the Mediation unless the act or omission is shown to be fraudulent or in bad faith.

7.2. The Parties shall indemnify the Mediator against all claims by third parties and in respect of this the Parties shall be jointly and severally liable.

**We, the undersigned, agree to abide by the terms of this Agreement to Mediate.**

**Signed by or on behalf of the First Party:**

Name: .....	Name: .....
Signature: .....	Signature: .....
Date: .....	Date: .....
Name: .....	Name: .....
Signature: .....	Signature: .....
Date: .....	Date: .....

**Signed by or on behalf of the Second Party:**

Name: .....	Name:.....
Signature:.....	Signature:.....
Date: .....	Date:.....

**Mediator's signature:.....**

**Date: .....**

CONFIDENTIALITY AGREEMENT (to be signed by those in attendance who are not Parties or Representatives of Parties):

In consideration of my/our being permitted to attend this Mediation, I/We agree to be bound by the confidentiality provisions of this Agreement

Name

Signature