



The Dispute Mediation Consultancy LLP

Civil Mediation Council Accredited

AGREEMENT TO MEDIATE

VERSION 1.4.1

**Ref: 13 – 1
v**



Between

Party A

– represented by

Solicitors

.....

Party B

– represented by

Solicitors

.....

Date: 2013

.....

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO31 7EG
Telephone: +44 (0) 7540 333340 email: info@dispute-mediation.co.uk
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The Dispute Mediation Consultancy LLP

AGREEMENT TO MEDIATE

This Agreement is made this day of 2013

Parties:

Party A

– represented by

Solicitors

Party B

– represented by

Solicitors

(Together referred to as “**the Parties**”)

The Mediator/s

The Dispute Mediation Consultancy LLP (Identified within this agreement as DMC)

of: Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight PO31 7EG

The Mediator: Accredited Mediator
(A term which includes any Assistant or Pupil Mediator or Observer)

In relation to a mediation to be held:

At

On 2013

At

(“**The Mediation**”)

Concerning a dispute between the Parties in respect of¹ -

Party A

Party B

(“**The Dispute**”)

IT IS AGREED by those signing this Agreement that:

¹ Provide sufficient detail to identify the complaint/s of the Party seeking a remedy

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1. The Parties will (unless and until one of the Parties withdraws from the Mediation, or it is otherwise determined) attempt in good faith to resolve the Dispute by mediation and will take all such steps as may be necessary to participate fully in the mediation process, including the taking of all preparatory steps for the mediation appointment. The provisions of the DMC Code of Procedure set out in Appendix 1 as supplemented by the Terms & Conditions shall apply to the Mediation and are incorporated in and form part of this Agreement.
2. The Parties warrant that the signatory to this Agreement has the authority to bind the respective Party and all others present at the mediation appointment on that Party's behalf to bind that Party to observe the terms of this Agreement, and the Terms & Conditions, and also have authority to bind that Party to the terms of any settlement agreement.
3. The Mediator may in his or her absolute discretion give such directions for the conduct of the Mediation as he or she thinks fit. Such directions shall be communicated in writing to the Parties' Representatives for the time being as soon as reasonably practicable.
4. The mediation appointment shall take place as set out above. If the Dispute has not been resolved at the end of the time allotted then, with the agreement of all the Parties and the Mediator, the appointment may be continued or may be resumed at such time and place as the Parties, the Mediator and DMC may agree.
5. The procedure at the Hearing shall be determined by the Mediator in consultation with the Representatives and but will be conducted on a 'without prejudice' basis. In the event of any disagreement the decision of the Mediator shall be final.
6. Unless otherwise agreed by the Parties the language in which the Mediation shall be conducted shall be English and this Agreement and any settlement agreement shall be governed by the law of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales as regards any claim or matter arising under or in relation thereto.
7. In the event that no settlement is reached by the Parties all the Parties' rights shall be reserved and shall remain in all respects unaffected by the Mediation save to the extent provided in this Agreement.
8. **The Mediation**
 - 8.1 Parties, their Representatives, their advisers and the Mediator and Assistant Mediator (if any) shall keep confidential and shall not reveal save as required by law and insofar as may be necessary to bring into effect or enforce the settlement agreement:-
 - 8.1.1 any written summaries of the Parties' cases;
 - 8.1.2 any statements whether oral or written made in the course of the Hearing;
 - 8.1.3 any concessions or admissions of law or fact;
 - 8.1.4 that any settlement has been reached;
 - 8.2 The Mediation shall be confidential and shall be treated as though the same was a negotiation conducted upon a "without prejudice" basis with a view to settling proceedings and shall be privileged according to law.

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- 8.3 No recording or other verbatim record shall be made or kept of the Mediation.
- 8.4 All documents, written case summaries, written submissions, written concessions or admissions of law or fact or written statements (whether prepared specifically for the purposes of the Mediation or not) used or disclosed for the purposes of the Mediation and in the possession of the Mediator shall be destroyed after the conclusion of termination of the Mediation.
- 8.5 The Parties shall not be permitted to rely upon any expression of opinion, advice or comment made by the Mediator in the course of the Mediation in or for the purposes of any legal or similar proceedings or any form of alternative dispute resolution in relation to the Dispute or any matter related to or concerning the subject matter of the Mediation.
- 8.6 The Parties will not call the Mediator or any employee or consultant of DMC as a witness nor require them to produce in evidence any records or notes relating to the Mediation in any litigation, arbitration or any other formal process arising from or in connection with the Dispute and the Mediation, nor will the Mediator nor any DMC employee or consultant act or agree to act as a witness, expert, arbitrator or consultant in any such process.
- 8.7 Despite para. 8.6 should either of the parties call a mediator or any other member or associate of DMC, to give evidence they shall agree by this contractual agreement that they will indemnify the Mediator, Assistant Mediator and any other employee or consultant of DMC in respect of costs he or she incurs in dealing with the application and shall agree to provide for such persons to be paid at the standard hourly rate for Mediators that shall be at that time be current insofar as time spent dealing with such application giving evidence and any associated reasonable travelling expense.
9. **Fees & cancellation**
- 9.1 Unless otherwise agreed in writing all the costs of the Mediation, the fees and expenses of the Mediator (which expression shall include the Assistant Mediator where one is appointed), the costs of the appointment [and the administrative charges and costs of DMC] including all Value Added Tax if applicable, shall be borne by the Parties in equal shares. However each Party further agrees that any court or tribunal may treat any such fees and costs and each Party's legal costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether or not the Mediation results in the settlement of the Dispute.
- 9.2 In the event that the Parties settle the Dispute before the mediation appointment or for any other reason the appointment does not take place or is adjourned, but after fees payable in advance have become due (whether paid or not) DMC and or the Mediator shall be entitled to retain or receive payment (as the case may be) of any irrecoverable expenses incurred together with the following additional charges:-
- (1) Cancellation 5 working days or more before the date fixed for the commencement of the Hearing – No additional charges.
 - (2) Cancellation 3-4 working days before the date fixed for the commencement of the Hearing - 25% of the mediation rate plus the fees for any preparation & administration time actually spent by the Mediator & DMC.
 - (3) Cancellation less than 3 working days before the date fixed for the

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commencement of the Hearing - 50% of the mediation rate plus the fees for any preparation time actually spent by the Mediator.

- (4) Cancellation on the day of Hearing - 100% of the mediation rate.
- (5) The Parties shall be responsible for all such fees, expenses and additional charges in equal shares and DMC shall not be concerned or affected by any dispute or disagreement between the Parties or any of them as to who is responsible for the cancellation or adjournment of the Hearing.
- (6) For the avoidance of doubt DMC will act as the agent of the Parties in respect of any booking of accommodation, equipment hire or the like which the Parties may require for the purposes of the Mediation and the Parties shall be liable to indemnify DMC in respect of any such booking fees, equipment hire or the like which are incurred by DMC on their behalf.

10. Payment

- 10.1 The Parties representatives (Solicitors etc) shall be responsible for payment of the Mediator's fees and the fees of DMC in accordance with the DMC Terms & Conditions.
- 10.2 The Parties representatives hereby agree to pay the mediation fees to The Dispute Mediation Consultancy LLP **no later than 5 working days** in advance of the Mediation Day (unless otherwise agreed) as a pre-condition of the Mediation Day taking place.

Exclusions of Liability

11. Neither DMC nor any of its employees, servants or agents nor the Mediator nor any Assistant Mediator shall be liable to the Parties in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever except in the case of fraudulent misrepresentation or dishonesty for (i) any increased costs or expenses (ii) for any economic loss, loss of profit, business, contracts, revenues or anticipated savings or (iii) for any other loss or damage (including but not limited to special, indirect or consequential loss or damage) of whatever nature in respect of any act or omission in connection with the services provided by them.
12. No responsibility is assumed by DMC nor by any of its members, servants or agents nor by the Mediator nor by any Assistant Mediator for the accuracy or completeness of any advice or opinion proffered (whether intentionally or not) in the course of the Mediation or for any assistance given in or about the content or drafting of any settlement agreement and the Parties acknowledge that they are not entitled to rely upon any such advice, opinion or assistance and must seek their own legal or other professional advice.

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13. The Mediator and the Assistant Mediator where appointed act as independent service providers in the performance of their functions in connection with the Mediation and are not the servants or agents of DMC nor its representative(s) and the Parties hereby expressly acknowledge that the Mediator and Assistant Mediator where appointed so act.

Signed:.....
On behalf of Party A

Signed:.....
Legal Representative of Party A

Signed:.....
On behalf of Party B

Signed:.....
Legal Representative Party B

Signed:.....
Mediator

Signed:.....
Assistant Mediator

Signed:..... On behalf of DMC

DISPUTE MEDIATION CONSULTANCY

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APPENDIX 1**DMC Code of Procedure*****The Mediator's Position***

1. The ultimate right to determine the procedure at the Hearing rests with the Mediator. He or she may in his or her absolute discretion terminate any meeting or discussion, limit the time for which any Representative may address him or her or otherwise act in any way seen fit with a view to the efficient, fair and orderly conduct of the appointment.
2. Neither the Mediator nor any Assistant Mediator will act as counsel, consultant, advisor or expert for any Party to the Dispute in relation to the Dispute nor in any other capacity in relation to the Dispute which might reasonably be considered to involve the use of confidential information to which he or she has become privy by reason of his involvement in the Dispute as Mediator or Assistant Mediator unless all the Parties agree in writing that he or she may so act.

Termination of the Mediation

3. Any Party to the Mediation may withdraw from the Mediation at any time and shall forthwith notify the Mediator, DMC as appropriate and the other Parties in writing. In the event of a Party withdrawing from the Mediation:-
 - 3.1. that Party shall remain liable for its share of the fees and charges in respect of the Mediation up to and including the date upon which written notice is received by DMC including such fees and charges payable in advance which have become due (whether paid or not) and DMC shall be entitled to retain or receive payment (as the case may be) of its administrative charges and any irrecoverable expenses incurred including any fees of the Mediator in respect of reading time or preparation;
 - 3.2. the remaining Parties to the Mediation (if more than one) may by notice in writing to the Mediator and or DMC agree to continue the Mediation as between themselves and if they do so agree shall in the same notice inform the Mediator and or DMC the issues remaining the subject of the Mediation.
4. The Mediator may in his or her absolute discretion determine for any reason that the Mediation ought to be terminated or adjourned and the Mediator shall not be required to give his or her reasons for so determining.

Parties' Own Costs

5. The Mediator has no power to award costs to or against any Party.

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