



The Dispute Mediation Consultancy LLP

PARTIES AGREEMENT TO MEDIATE

VERSION 3.0

Ref: 18 – 1?? /GV



Regulated Firm

Agreement for Mediation

Between

(1) Party A: **Name** (Represented by **Name** of **Name**)

(2) Party B: **Name** (Represented by **Name** of **Name**)

Being the 2 sets of parties to the dispute, collectively known as 'the Parties'.

(3) The Mediator: **Name**

AND

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

Date: **Date** 2018

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0)1983 243340 email: info@dispute-mediation.co.uk
www.dispute-mediation.co.uk



The Dispute Mediation Consultancy LLP

PARTIES AGREEMENT TO MEDIATE

We, the parties and the Mediator, agree that The Dispute Mediation Consultancy LLP shall administer the mediation and that the mediation shall be conducted on the following terms and conditions:

1 Overview

1.1 The Parties and the Mediator agree that these terms and conditions as contained within this agreement shall be deemed to apply to the mediation of the Parties dispute, notwithstanding the absence of any one or more signatures to the agreement.

1.2 The terms of the mediation apply on application to DMC for a mediator and as further defined by the Letter of Appointment issued by DMC.

1.3 This mediation agreement consists of the following documents:

- Parties Agreement to Mediate;and
- Appendix 1: DMC Code of Procedure;
- Letter of Appointment;
- DMC Guidance Note – Position Statement/Summary of Case

2 The Appointment

2.1 The parties agree to the appointment of the Mediator on the terms of this agreement.

2.2 The parties acknowledge that the Mediator is independent and neutral, is not an agent or employee of DMC, and that neither DMC nor the mediator, regardless of professional background, gives legal advice.

2.3 The parties recognise that mediation is a voluntary process and understand that the role of the Mediator is to facilitate a settlement of the dispute by negotiation and agreement where it is possible, and that the Mediator will not adjudicate the dispute unless specifically requested at the outset of the mediation (i.e. Mediated Determination).

2.4 Save in the case of gross error or misconduct, the parties agree that they will respect the neutrality of the Mediator and any professional body to which they may belong, and not bring any claim, demands or proceedings against the Mediator.

2.5 The parties agree and acknowledge that DMC shall not be liable for any alleged or actual loss or damage arising out of the appointment of the Mediator or the conduct of the mediation, whether in contract or tort, and agree that they will not bring any claim, demands or proceedings against DMC.

2.6 The parties and the Mediator acknowledge and agree that DMC is the sole agent of the Mediator for the purposes of this mediation and that all fees due in accordance with this agreement shall be paid direct to DMC.

2.7 The Mediator hereby agrees that DMC shall be under no liability to the mediator in respect of any fees unpaid by the parties.

2.8 The Mediator confirms and warrants that he or she is fully trained and accredited in Mediation, undertakes to comply with all relevant professional standards set out for mediators by the Civil Mediation Council & DMC, and undertakes at all times to have suitable and sufficient professional indemnity cover in place and to provide a copy of the

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk

www.dispute-mediation.co.uk



certificate to DMC upon request.

3 Venue and date of Mediation

The Mediation will take place on the date and at the time agreed, and at the venue stated in the Letter of Appointment.

4 IT IS FURTHER AGREED

- 4.1 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.
- 4.2 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.
- 4.3 The provisions of the DMC Code of Procedure set out in Appendix 1 as supplemented by the Letter of Appointment, shall apply to the Mediation and are incorporated in and form part of this Agreement.
- 4.4 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 mediated Settlement Agreement.
- 4.5 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.
- 4.6 The Parties understand that any settlement will not be legally binding until the agreement is written and signed by the parties.
- 4.7 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.
- 4.8 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.
- 4.9 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.
- 4.10 Despite clause 4.9 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 2x the standard hourly rate for Mediators that shall at that time be current insofar as time spent dealing with such application giving evidence and any associated reasonable travelling expense and disbursements.

5 Mediation procedure & confidentiality

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk

www.dispute-mediation.co.uk



- 5.1 Legal representation for the Parties is not a requirement of mediation. However, where a party is not represented, such a party is advised to obtain independent legal advice before and during the mediation, and prior to signing any legally binding Settlement Agreement.
- 5.2 The Parties agree to notify DMC by email the names of persons expected to attend the mediation and that this information will be exchanged between the Parties and Mediator.
- 5.3 The Parties may agree to prepare an individual mediation 'Summary of Case/Position Statement' as guided by the DMC Guidance Note issued with this agreement or provide an agreed joint mediation bundle to be provided direct to the Mediator.
- 5.4 Evidence that is otherwise admissible shall not be rendered inadmissible as a result of its use in the Mediation.
- 5.5 The procedure at the Mediation shall be determined by the Mediator in consultation with the Parties and their Representatives (if any) and will be conducted on a 'without prejudice' basis. In the event of any disagreement the decision of the Mediator shall be final.
- 5.6 The Parties or the Mediator may end the mediation at any time without giving a reason.
- 5.7 The Parties, their Representatives, their advisers and the Mediator, Assistant Mediator and Observer (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:
- 5.7.1 any written summaries of the Parties' cases;
 - 5.7.2 any statements whether oral or written made in the course of the Mediation;
 - 5.7.3 any concessions or admissions of law or fact;
 - 5.7.4 that any settlement has been reached;
- 5.8 All documents, written Case Summaries, Position Statements, 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 or termination of the Mediation.
- 5.9 No recording or other verbatim record shall be made or kept of the Mediation.
- 5.10 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. Any additional costs as a result of implementing this clause shall be subject to additional cost as defined in clause 7 - Additional Charges.
- 5.11 **Use of Personal Data:** The parties and their representatives consent that DMC shall retain basic personal information as collected from their mediation application form to enable DMC to process the application efficiently for the requested Mediation works. This information will be stored on DMC systems in electronic and/or paper forms in compliance with General Data Protection Regulation (GDPR) and will only be used in relation to the requested work. Other than all necessary parties involved in the mediation and for feedback this information shall not be shared externally. For clarification parties personal information shall be made known to the selected mediator but email addresses or telephone contact information shall not be shared with the other party in dispute unless previously disclosed.
- 6. Fees, cancellation and re-scheduling**
- 6.1 The Mediator's fee and the DMC administration fee payable by each party or, if not a fixed fee, the basis upon which fees are to be calculated, are set out in the Letter of

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk

www.dispute-mediation.co.uk



Appointment.

- 6.2 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, and any additional overtime fees and charges that may result due to overtime, shall be borne by the Parties in equal shares, unless provided otherwise by this agreement or as a result of a mediated settlement, or they agree otherwise, and in any case shall be paid no later than 7 days (including non-working days and weekends) prior to the day fixed for the mediation.
- 6.3 Each Party further acknowledges 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.
- 6.4 The Parties shall give written notice to DMC by email to info@dispute-mediation.co.uk if they wish to (1) cancel, or (2) re-schedule the mediation, giving the Party's name and DMC reference number.
- 6.5 **Cancellation:** In the event that the Parties give notice to DMC to cancel the mediation, whether the matter has been settled or otherwise, or for any other reason the appointment does not take place, but after fees payable in advance have become due (whether paid or not) the Parties and the Mediator agree that there shall be a cancellation fee as follows:-
- (1) Cancellation no later than 7 days (including non-working days and weekends) before the date fixed for the commencement of the Mediation - a cancellation fee in the sum of the DMC administration fee, and 50% of the mediator's fees, plus any additional charges incurred pursuant to clause 7; OR
 - (2) Cancellation less than 7 days (including non-working days and weekends) before the date fixed for the commencement of the Mediation - a cancellation fee in the sum of the DMC administration fee, and 100% of the mediator's fees, plus any additional charges incurred pursuant to clause 7.
- 6.6 **Re-scheduling:** In the event that the Parties give notice to DMC to re-schedule the mediation for whenever or whatever reason, the Parties and the Mediator agree that there shall be a re-scheduling fee as follows:-
- (1) Re-scheduling no later than 7 days (including non-working days and weekends) before the date fixed for the commencement of the Mediation - an additional re-scheduling fee in the sum of 25% of the DMC administration fee, and 25% of the mediator's fees, plus any additional charges incurred pursuant to clause 7.
 - (2) Re-scheduling less than 7 days (including non-working days and weekends) before the date fixed for the commencement of the Mediation - an additional re-scheduling fee in the sum of 50% of the DMC administration fee, and 50% of the mediator's fees, plus any additional charges incurred pursuant to clause 7.
- 6.7 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 as to who is responsible for the cancellation, re-scheduling or adjournment of the Mediation or an individual Party's claim against their insurance.
- 6.8 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

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk

www.dispute-mediation.co.uk



behalf.

7. Additional charges

- 7.1 Overtime beyond the agreed times as set out in the Letter of Appointment, calculated at 1.25 times the standard mediation hourly rate or as otherwise shown in the Letter of Appointment plus any extraordinary travel expenses of the mediator which may be incurred due to the lateness of the hour;
- 7.2 Overnight accommodation arising as a result of 7.1;
- 7.3 Additional preparation time by the Mediator as a result of deferment or adjournment of the mediation, to be calculated pro-rata of the mediation fee;
- 7.4 Additional preparation time by the Mediator as a result of excessive pre-reading documentation, to be calculated pro-rata of the mediation fee (Note: Mediator's fees include up to 2 hours of reading time);
- 7.5 Any agreed additional expenses of the mediator (e.g. long distance travel & pre-mediation site visit);
- 7.6 Any incidental expenses, including venue hire, refreshments, and any other disbursements validly incurred by DMC in respect to the mediation, to the cost of which DMC shall be entitled to add an administration fee of 15%.
- 7.7 Any cost, charges and expenses incurred in enforcing the payment of any fees or additional charges which shall be payable on demand entirely by the party in default.

8. Payment & late payment interest

- 8.1 The Parties representatives (Solicitors etc) if appointed, shall be responsible for payment of the Mediator's fees and the fees of DMC in accordance with this agreement (from funds held on account) unless paid by the due date direct to DMC by their client.
- 8.2 The Parties representatives hereby agree to pay the mediation fees to The Dispute Mediation Consultancy LLP by the Due Date; this being 7 days (including non-working days and weekends) prior to the day fixed for the mediation (unless otherwise agreed) as a pre-condition of the Mediation Day taking place.
- 8.3 Following the conclusion of the mediation, the balance of the fees (if any) together with any additional charges payable in relation to overtime costs shall be paid by the parties to DMC, no later than 14 days after receipt of an invoice.
- 8.4 DMC encourage prompt payment of invoices however, The Dispute Mediation Consultancy reserve the right to charge interest on late payment of any invoices outstanding until payment. Interest shall be compounded quarterly from the due date of payment, accruing daily at the statutory rate; being Bank of England base rate plus 8%, until payment and shall be added to the outstanding account.

9 Exclusions of Liability

- 9.1 Neither DMC nor any of its employees, servants or agents nor the Mediator nor any Assistant Mediator or Observer 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.

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk

www.dispute-mediation.co.uk



9.2 No responsibility is assumed by DMC nor by any of its members, servants or agents nor by the Mediator nor by any Assistant Mediator or Observer 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.

9.3 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.

10 Human Rights

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 at mediation, the Parties right to a fair trial remain unaffected.

11 Law and Jurisdiction

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.

Signatures of the Parties (Please sign and return to DMC)

<u>Name(s) of Party A</u> Name
Signed:.....Signed:.....
Date:
I (name of legal representative) Name Of Messrs Name (Solicitors), have advised my client of the meaning and effect of this agreement, undertake to ensure that my client's fees are paid to DMC in accordance with the terms of this agreement, and acknowledge and agree that my firm is liable for the costs of the mediation in the same way as it is liable for disbursements incurred in the course of litigation and shall be responsible to and shall indemnify DMC for payment of the fees set out in this agreement in the event of my client's failure to pay pursuant to the terms of this agreement Signed:..... Legal Representative of Party A

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk
www.dispute-mediation.co.uk



Name(s) of Party B	
Name	
Signed:.....Signed:.....	
Date:	
I (name of legal representative) Name	
Of Messrs Name (Solicitors), have advised my client of the meaning and effect of this agreement, undertake to ensure that my client's fees are paid to DMC in accordance with the terms of this agreement, and acknowledge and agree that my firm is liable for the costs of the mediation in the same way as it is liable for disbursements incurred in the course of litigation and shall be responsible to and shall indemnify DMC for payment of the fees set out in this agreement in the event of my client's failure to pay pursuant to the terms of this agreement	
Signed:.....	
Legal Representative of Party B	

For and on behalf of the Mediator

Signed:.....	Signed:.....
Mediator	Assistant Mediator (if any)
Signed:.....	
Observer (if any)	

For and on behalf of The Dispute Mediation Consultancy LLP

Name: Grant N. Vincent
Signed:.....

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk
www.dispute-mediation.co.uk



APPENDIX 1

DMC Code of Procedure

The Mediator's Position

- A1.1 The ultimate right to determine the procedure at the Mediation 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.
- A1.2 Neither the Mediator nor any Assistant Mediator or Observer 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

- A1.3 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:-
- (i) 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;
 - (ii) 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.
- A1.4. 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

- A1.5 The Mediator has no power to award costs to or against any Party.

Dispute Mediation Consultancy LLP

Victoria Chambers, 54 Mill Hill Road, Cowes, Isle of Wight, U.K., PO317EG
Telephone: +44 (0) 1983 243340 email: info@dispute-mediation.co.uk
www.dispute-mediation.co.uk

