



The Dispute Mediation Consultancy LLP

**Civil Mediation Council Accredited
Providers
of
RICS Accredited Mediators**

STANDARD MEDIATION TERMS & CONDITIONS

VERSION 1.4.2

Ref: 13 -



For

Party A

– represented by

.....

Party B

– represented by

.....

Date: 2013

.....

The Dispute Mediation Consultancy LLP
STANDARD MEDIATION TERMS & CONDITIONS



Mediation Agreement

1. The parties ("the Parties") to the dispute/s in question ("the Dispute"), and the Accredited Mediator ("The Mediator") will enter into an agreement ("the DMC Mediation Agreement") based on the Royal Institution of Chartered Surveyors ("RICS") Model Mediation Agreement (as amended) in relation to the conduct of the Mediation. These Terms & Conditions will be incorporated into, form part of, and may be varied by, the Mediation Agreement.
2. The Parties acknowledge that the Terms & Conditions shall apply from the date of appointment of the Mediator which may precede the execution of the Mediation Agreement.

The Mediator

3. The Dispute Mediation Consultancy LLP ("DMC") may, subject to the agreement of the Parties or any court order, nominate an independent third party(ies) as the Mediator ("the Mediator").
4. The Mediator, after consultation with the Parties where appropriate, will:
 - attend any meetings or telephone or e-mail consultations with any or all of the Parties preceding the mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;
 - read before the Mediation each Case Summary and all the Documents sent to him/her (see paragraph 6 below);
 - chair, and determine the procedure for, the Mediation;
 - only if requested, facilitate the drawing up of any Settlement Agreement; and
 - abide by these Terms & Conditions and the Mediation Agreement.
5. The Mediator will not act for any of the Parties individually in connection with the Dispute in any capacity either during the currency of his or her appointment or at any time thereafter. The Parties accept that in relation to the Dispute neither the Mediator nor DMC is an agent of, or acting in any capacity for, any of the Parties. The Parties and the Mediator accept that the Mediator (unless a Member of DMC) is acting as an independent & neutral contractor and not employee of DMC.

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Arrangements

6. DMC, in conjunction with the Mediator, will make the necessary arrangements for the Mediation if so requested by the Parties including, as necessary:

- nominating, and obtaining the agreement of the Parties to, the Mediator;
- drawing up the Mediation Agreement;
- organising a suitable venue and date;
- organising exchange of the Case Summaries/Statement of Case and any documents;
- meeting with any or all of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the Mediation; and
- general administration in relation to the Mediation.

7. If there is any issue about the conduct of the Mediation (including as to the nomination of the Mediator) upon which the Parties cannot agree within a reasonable time, DMC will, at the request of any Party, decide the issue for the Parties, having consulted with them.

8. These Terms & Conditions are not intended to exclude the DMC Complaints Procedure in respect of any conduct of the Mediator subject only to the issue of confidentiality attaching to the Mediation. The Mediator agrees to abide by the European Code of Conduct for Mediators.

Participants

9. Parties should inform the Mediator prior to the date of Mediation of all persons attending the mediation on behalf of each Party.

10. The Parties attending, or their lead representatives, must have the full authority of their respective Parties to settle the Dispute, without having to refer to anybody else. If there is any restriction on that authority, this should be discussed with DMC prior to the appointment of the Mediator or afterwards with the Mediator himself or herself before the Mediation.

Exchange of information

11. Each Party will prepare for the other Party(ies), and the Mediator, sufficient copies of:

- a concise summary ("the Case Summary") of its case in the Dispute; and
- subject to guidance by the Mediator all the documents to which the Case Summary refers and any others to which it may want to refer in the Mediation ("the Documents").

12. The Parties will exchange the 'Case Summary' and Documents with each other by agreement or at the direction of the Mediator in good time before the Mediation and send copies directly to the Mediator on the same date. In addition, each Party may send to the Mediator and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party; clearly stating in writing that such documentation is confidential to the Mediator.

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13. The Parties should try to agree:

- the maximum number of pages of each Case Summary; and
- a joint bundle of Documents or the maximum length of each bundle of Documents bearing in mind the time available to the Mediator commensurate with the fee and time allowed for preparation.

The Mediation

14. The Mediation will take place at the arranged place and time stated in the Mediation Agreement.

15. The Mediator will chair, and determine the procedure at, the Mediation.

16. No recording or transcript of the Mediation will be made.

17. At the conclusion of the Mediation process the Mediator will destroy any notes made during the Mediation appointment.

Settlement agreement

18. Any settlement reached in the Mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties as a Settlement Agreement.

Termination

19. Any of the Parties may withdraw from the Mediation at any time and shall immediately inform the Mediator and the other representatives in writing. The Mediation will terminate when:

- a Party withdraws from the Mediation by written notice to the Mediator; or
- the Mediator, at his/her discretion, withdraws from the mediation; or
- the Mediator decides in his/her sole discretion that one Party is not acting in good faith; or
- a written Settlement Agreement is concluded which fully resolves the Dispute.

20. The Mediator may also adjourn the Mediation in order to allow parties to consider specific proposals, get further information or for any other reason, which the Mediator considers helpful in furthering the mediation process. The Mediation will then reconvene with the agreement of the parties.

Stay of proceedings

21. Any contemplated or existing litigation or arbitration in relation to the Dispute may be commenced or continued notwithstanding the Mediation unless the Parties agree otherwise or a court so orders.

22. The referral of the Dispute to the Mediation does not affect any rights that exist under Article 6 of the European Convention on Human Rights, and if the Dispute does not settle through the Mediation the Parties' right to a fair trial remains unaffected.

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Confidentiality & Advice

23. Every person involved in the Mediation will keep confidential and not use for any collateral or ulterior purpose all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation, including the fact of any settlement and its terms, save for the fact that the Mediation is to take place or has taken place. The information to be kept confidential shall include all communications whether given orally or in writing or otherwise in during or as a result of the Mediation, all negotiations or settlement discussions in the course of the Mediation, all consultations in respect of the Mediation and all the Mediator's oral or written communications with the Parties, their representatives, and any participant.

24. All information (whether oral, in writing or otherwise) 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. This does not apply to any information, which would in any event have been admissible or disclosable in any such proceedings.

25. The Mediator will not disclose to any other Party any information given to him by a Party in confidence without the express consent of that Party.

26. Paragraphs 23-25 shall not apply if, and to the extent that:

- all Parties consent to the disclosure; or
- the Mediator is required under the general law to make disclosure; or
- 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
- 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.

27. None of the Parties to the Mediation Agreement will call the Mediator or DMC (or any member, employee, consultant, officer or representative of DMC) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever arising from, or in connection with, the matters in issue in the Mediation. The Mediator and DMC will not voluntarily act in any such capacity without the written agreement of all the Parties unless so ordered by the Court.

28. It is acknowledged that neither DMC nor the Mediator offer legal advice or act as a legal advisor for any of the Parties nor will they analyse or protect any Party's legal position or rights.

Fees, expenses, costs payment and interest

29. Unless agreed otherwise by the Parties in writing in advance of the appointment of the Mediator and subject to clause 9.1 of the Mediation Agreement, the fees of DMC and or the Mediator and the other expenses of the Mediation will be borne equally by the Parties. Payment of these fees and expenses will be made to DMC or, if independently appointed, the Mediator in accordance with its fee schedule and terms and conditions of business.

30. The Letter of Appointment which forms part of this agreement sets out the fees payable by each party, or if not a fixed fee, the basis upon which the fees of DMC, The Mediator, Assistant Mediator and any Contractor (if so appointed) are to be calculated.

31. Each Party will bear its own costs and expenses of its participation in the Mediation.

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32. Each party shall pay the fees or deposit in advance of the Mediation in a manner as set out in the payment terms noted within the Letter of Appointment.

33. On conclusion of the Mediation, the balance of the fees, if any, together with any additional charges pursuant to this agreement, shall be paid by the parties to DMC administration, within either

- 14 days of receipt of an invoice; or
- within 30 days of the date of the mediation.

34. Interest charged on late payments

Interest will be charged on late payment for any goods &/or service provided at the statutory rate:

- 'statutory interest' - is currently Bank of England base rate plus 8%

35. In the event that the parties be represented by a legal representative all DMC invoices for payment will be addressed to the respective parties legal representatives for payment.

Exclusion of liability

36. Neither the Mediator nor DMC shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the Mediation, unless the act or omission is shown to have been made or omitted fraudulently or by wilful misconduct or the Mediator has acted in bad faith.

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