

AGREEMENT FOR MEDIATION (1/2011 Version)

Between:

(1)
(represented by Messrs.Solicitors)

(2)
(represented by Messrs.Solicitors)

being the parties to the dispute, collectively known as “the parties”,

(3)
..... (“the Mediator”)

-and-

(4) Clerksroom, Equity House, Blackbrook Park Avenue, Taunton, TA1 2PX “Clerksroom”).

PARTIES AGREEMENT TO MEDIATE

We, the parties and the Mediator, agree that Clerksroom shall administer the mediation and 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. 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 Clerksroom, and that the Mediator does not give legal advice.

2.3 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.

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 the Mediator may belong, and not bring any claim, demands or proceedings against the Mediator.

- 2.5 Further, the parties agree and acknowledge that Clerksroom 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 Clerksroom.
- 2.6 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.
- 2.7 The parties and the Mediator acknowledge and agree that Clerksroom 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 Clerksroom.
- 2.8 The Mediator hereby agrees that Clerksroom shall be under no liability to the Mediator in respect of any fees unpaid by the parties.
- 2.9 The Mediator confirms and warrants that he is fully trained or accredited in the field of ADR work in which he or she holds himself out, undertakes to comply with all relevant professional standards in respect of mediators, and undertakes at all times to have suitable and sufficient professional indemnity cover in place and to provide a copy of the certificate to Clerksroom upon request.

3. **Venue and Date**

- 3.1 The mediation will take place on the date and time agreed and at the venue stated in the letter of appointment accompanying this agreement.
- 3.2 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 Clerksroom accordingly. Alternatively, Clerksroom will make the arrangements on behalf of the parties and charge the parties as provided in Clause 4.6.4.

4. **Fees**

- 4.1 The Mediator's fee and the administration fee payable by each party or, if not a fixed fee, the basis upon which the fees are to be calculated, is set out in the letter of appointment.
 - 4.2.1 No later than 7 days (including non-working days and weekends) before the day fixed for the mediation, each party shall pay the fees or, if not a fixed fee, the deposit set out in the letter of appointment.
 - 4.2.2 Following the conclusion of the mediation, the balance of the fees, if any, together with any additional charges payable pursuant to clause 4.6 of this agreement, shall be paid by the parties to Clerksroom, no later than 14 days after receipt of an invoice.
- 4.3 The parties agree that the fees and any additional charges shall be borne equally between them, unless provided otherwise by this agreement or as a result of a mediated settlement, they agree otherwise.
- 4.4 VAT is payable on all fees and charges at the applicable rate from time to time.
- 4.5 In the event of late payment of any sum, interest shall accrue on the said sum at the rate of 4% above Barclays Bank base rate from time to time until payment and shall be added to the outstanding account.
- 4.6 Additional charges shall be payable by the parties in respect of:

- 4.6.1 Overtime beyond the agreed times set out in the letter of appointment accompanying this agreement, calculated pro rata to the mediation fee plus any extraordinary travel expenses of the Mediator which may be incurred due to the lateness of the hour.
- 4.6.2 Additional preparation time by the Mediator occasioned by cancellation or adjournment by a party, to be calculated pro rata to the mediation fee;
- 4.6.3 Any agreed expenses of the Mediator;
- 4.6.4 Any incidental expenses, including venue hire, refreshments, and any other disbursements validly incurred by Clerksroom in respect of the mediation, to the cost of which Clerksroom shall be entitled to add a handling fee of 20%.
- 4.6.5 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.

5 Cancellation and re-scheduling

- 5.1 In the event of cancellation of the mediation, whether the matter or dispute has been settled or otherwise, and for whatever reason, the parties and the mediator agree that there shall be a cancellation fee as follows:
 - 5.1.1 In the event of notice of cancellation given to Clerksroom no later than 7 days (including non-working days and weekends) before the day fixed for the mediation, there shall be a cancellation fee in the sum of the administration fee, and 50% of the Mediator's fees, plus any additional charges incurred pursuant to clause 4.6, or
 - 5.1.2 In the event of notice of cancellation given to Clerksroom less than 7 days (including non-working days and weekends) before the mediation, there shall be a cancellation fee in the sum of the administration fee, and 100% of the Mediator's fees, plus any additional charges incurred pursuant to clause 4.6."
- 5.2 In the event of the re-scheduling of the mediation otherwise than by Clerksroom, Whenever and for whatever reason, the parties and the mediator agree that there shall be a re-scheduling fee as follows:
 - 5.2.1 In the event of notice of re-scheduling given to Clerksroom no later than 7 days (including non-working days and weekends) before the day fixed for the mediation, there shall be a re-scheduling fee in the sum of 30% of the administration fee, and 30% of the Mediator's fees, plus any additional charges incurred pursuant to clause 4.6, or
 - 5.2.2 In the event of notice of re-scheduling given to Clerksroom less than 7 days (including non-working days and weekends) before the mediation, there shall be a re-scheduling fee in the sum of 50% of the administration fee, and 50% of the Mediator's fees, plus any additional charges incurred pursuant to clause 4.6.
- 5.3 Notice of cancellation or re-scheduling shall be given to Clerksroom by email to mail@clerksroom.com or by fax to 0845 083 3001 giving the case name and Clerksroom's reference number.

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, such party is advised to obtain 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 neither Clerksroom 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.
- 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 While it is recognised that mediation is a voluntary process and that 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 The parties agree that any settlement reached in the mediation will not be legally binding until written and signed.
- 6.8 There shall be no recording or stenographic record of the mediation.
- 6.9 The parties or the Mediator may end the mediation at any time without giving a reason.

7 Confidentiality

- 7.1 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.
- 7.2 Evidence which is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation.
- 7.3 The parties will not subpoena or otherwise require Clerksroom, a director or employee of Clerksroom, the Mediator or any other person attending the mediation under the auspices of Clerksroom to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings.
- 7.4 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.
- 7.5 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.
- 7.6 At the termination of the mediation all such material shall be returned to the originating party or forthwith destroyed at their option.

8 Human Rights

- 8.1 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.

9 Law and Jurisdiction

9.1 This agreement shall be governed by, construed and take effect in accordance with English Law.

9.2 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 (Please sign and return to Clerksroom)

Name of Party 1:.....

Signed:.....

Date:.....

I (*name of Legal Representative*)

.....

Of Messrs.....Solicitors

have advised my client of the meaning and effect of this agreement, undertake to ensure that my client's fees are paid to Clerksroom 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 Clerksroom for payment of the fees set out herein in the event of my client's failure to pay pursuant to the terms of this agreement.

Signature of representative:.....

Name of Party 2:.....

Signed:.....

Date:.....

I (*name of Legal Representative*)

.....

Of Messrs.....Solicitors

have advised my client of the meaning and effect of this agreement, undertake to ensure that my client's fees are paid to Clerksroom 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 Clerksroom for payment of the fees set out herein in the event of my client's failure to pay pursuant to the terms of this agreement.

Signature of representative:.....

Observer (if applicable):

For and on behalf of the Mediator:

Name:.....

Signed:.....

Date:.....

For and on behalf of Clerksroom Mediation:

Name: Stephen Ward

Signed 

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;
7. Any case law, regulations, etc. relied upon

Parties may also prepare a confidential brief to the mediator which will not be disclosed to the other party. If you send a confidential brief, please clearly mark it as confidential.

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.