

## **TERMS AND CONDITIONS**

### **A. THE MEDIATOR**

1. The Mediator shall throughout the mediation act as an independent impartial neutral facilitator and will not seek to adjudicate, arbitrate, furnish advice, or impose a decision or solution in respect of any issues between the parties.
2. The Mediator shall not be liable to any party for any act or omission in connection with the conduct of the mediation, save for any wilful misconduct.
3. The Mediator shall not be called as a witness or as an expert in any pending or subsequent litigation or arbitration relating to the dispute or subject matter of the mediation, save where the Mediator and all parties agree in writing.
4. The Mediator hereby confirms that all known financial and/or other interests, all social, business or professional relationships with any party and/or their representatives, or any facts or circumstances which may create doubt as to the impartiality of the Mediator, have been disclosed to the parties in writing. The Mediator shall immediately disclose any said interests, relationships or circumstances that become apparent hereafter.
5. The Mediator shall be entitled to conduct the mediation process at his/her discretion, including the structure of the process, the attendance of participants, agreeing of a timetable for the exchange of any relevant information or documentation, and the scheduling and re-scheduling of meetings with the parties, both before and during the mediation, whether in private caucus or with the parties jointly.

### **B. REPRESENTATION**

6. The Parties may choose to be represented or to remain unrepresented at the mediation, and the legal advisers to the parties shall be entitled to participate in the mediation, save that:-
  - (i) the manner and extent of the participation shall remain at the discretion of the Mediator in so far as such participation may be appropriate or beneficial or otherwise conducive to the success of the mediation process, and
  - (ii) the parties shall remain free at all times to consult with their legal advisers.

### **C. CONFIDENTIALITY**

7. The Parties and/or their representatives hereby confirm that they have full authority to settle the dispute *[or state any limitations to the authority]*.
8. The entire mediation process shall be confidential and conducted upon a without prejudice basis. All offers, promises, statements whether oral or in writing in the course of the mediation shall not be disclosed to third parties and shall remain privileged and confidential save that:
  - (i) any disclosure may be made that is or may be necessary for the implementation of any agreement reached in the mediation;
  - (ii) any evidence that would otherwise be admissible or disclosable shall not be rendered inadmissible or not disclosable by reason only of its use in the mediation;
  - (iii) where any information is given or received which relates or gives rise to a material risk of harm, injury or other risk to safety, the duty of confidentiality shall not apply, save that the Mediator shall seek prior agreement from the parties as to the manner and extent of any disclosure to be made.
  - (iv) the Mediator's obligation of confidentiality may cease if the Mediator is under an overriding obligation by law or by other public policy considerations to make disclosure, or may be subject to criminal proceedings if disclosure is not made.
9. At the conclusion of the mediation, at the request of any of the parties any written materials or documentation furnished to the Mediator or to another party shall be returned without the Mediator or the parties retaining copies thereof.
10. There shall be not stenographic, audio or visual record made or kept of the mediation process without the written agreement of the Mediator and all parties.

### **D. TERMINATION**

11. The Mediation process may be terminated when:
  - (i) the Parties and the Mediator are in agreement that the mediation has been unsuccessful; or
  - (ii) the Mediator is of the view that further steps in the mediation process are unlikely to achieve a settlement; or
  - (iii) one party withdraws from the mediation;
  - (iv) the Mediator decides in his or her absolute discretion that he or she should withdraw from the Mediation for any reason, and in which event the Mediator shall be under no obligation to give any explanation for so withdrawing.

## **E. SETTLEMENT**

12. If agreement is reached between the parties, or if any issues are resolved, the Parties or their representatives will execute Heads of Agreement for signature by or on behalf of all the parties to the agreement.
13. The agreement shall not be binding until it has been reduced to writing and signed by or on behalf of all the parties to the agreement.

## **F. FEES AND COSTS**

14. All fees for the professional services of the Mediator, together with all reasonable travel and other expenses incurred, shall be borne by the parties equally, unless otherwise agreed in writing.
15. Responsibility for the fee and expenses rests with the solicitors where instructed, or with the individual party if unrepresented.
16. The Mediator's basic fee for the said mediation shall be £ \_\_\_\_\_ plus VAT (per half or full day) (to also include preparation time).
17. In the event that the Mediator's basic fee is not paid prior to the commencement of the mediation, the mediator may refuse to proceed, or alternatively may agree to payment within 30 days of the issue of an invoice, after which interest shall accrue upon any unpaid invoice at the rate of 2% per month.
18. Rooms will be provided by \_\_\_\_\_ at a cost of \_\_\_\_\_ (or) free of charge, to include all refreshments for up to \_\_\_\_\_ people.
19. In the event that the Mediation exceeds the scheduled time there will be an additional fee at a rate of £250.00 plus VAT per hour.

## **G. CANCELLATION**

20. In the event that the mediation is cancelled by any one or more of the parties, a cancellation fee will be charged as follows:
  - (i) There will be no cancellation fee if the cancellation occurs more than 7 working days before the agreed date for the mediation, except for any irrecoverable expenses (e.g. venue/room cancellation fee).

- (ii) 50% of the aforesaid mediation and venue/room fee (if applicable), if the cancellation occurs less than 7 working days before the agreed date for the mediation.
- (iii) 100% of the aforesaid mediation and venue/room fee will be charged if the cancellation occurs less than 2 working days before the date and time agreed for the mediation.
- (iv) payment of the aforesaid cancellation fees shall be shared equally by the parties where the cancellation is agreed by all parties. Where the cancellation is made unilaterally, the party cancelling the mediation shall be liable for the whole of the cancellation payment.

21. No cancellation fee will be charged if the mediation date is rescheduled, provided that the mediation takes place within 28 days of the original mediation date, failing which the Mediator may treat the adjournment or postponement as a cancellation in accordance with the above provisions.

22. Where the mediation fee has already been paid by all parties at the time of cancellation, the Mediator will refund the mediation fee less any cancellation charge.

#### **H. INVOICING**

23. Unless a party is acting in person, invoices will be addressed to and payable by the solicitors or other lead advisors of each party with whom arrangements are made for the mediation. Invoices will be issued on the following basis:

- (i) First invoice – mediation fee for the preparation hours and mediation hours booked [and on account of expenses (e.g. venue/room fee)].
- (ii) Second invoice – any additional preparation hours, mediation hours [or expenses] not included in the first invoice.

24. The first invoice is payable no later than 7 working days in advance of the mediation or in full upon receipt, if issued within 7 working days prior to mediation, as a precondition to the mediation taking place.

25. Where the invoice is not settled in full prior to the mediation the mediator may allow the mediation to proceed subject to the instructing solicitor undertaking in writing to settle the full amount of the invoice, if still unpaid by the client, within 2 days of the date of the mediation.

26. The second invoice (if applicable), or any other invoices are payable in full within 7 days of the date of issue, unless agreement is reached to the contrary.

27. All fees are exclusive of VAT.

**I. INTERPRETATION**

28. The term 'Mediator' shall include the masculine and the feminine, and the plural as well as the singular where the context permits.

29. The agreement shall be governed by English law and construed and applied in accordance with the Rules and jurisdiction of the English courts.

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_ 2018

SIGNED: \_\_\_\_\_ for and on behalf of Party A

SIGNED: \_\_\_\_\_ for and on behalf of Party B

SIGNED: \_\_\_\_\_ By the Mediator