

MEDIATION AGREEMENT

THIS MEDIATION AGREEMENT IS MADE ON

2011

BETWEEN

Name

Address

Represented by
Name

Address

AND

Name

Address

Represented by
Name

Address

AND

THE MEDIATOR

ADDRESS

6 PUMP COURT TEMPLE LONDON EC4Y 7AR

THE DISPUTE

MEDIATION AGREEMENT

DETAILS OF MEDIATION

DATE	<input type="text"/>
LOCATION	<input type="text"/>
COMMENCEMENT	<input type="text"/>
DURATION	<input type="text"/>
AGREED FEE	<input type="text"/>
ADDITIONAL FEES	<input type="text"/>
RESPONSIBILITY FOR ROOMS/FACILITIES	<input type="text"/>
DATE FOR EXCHANGE OF CASE SUMMARY MEDIATION BUNDLE AND POSITION STATEMENTS	<input type="text"/>

BACKGROUND

A dispute ("the Dispute" - briefly described above) has arisen between the Parties, and the Parties have requested the Mediator to assist them to resolve the Dispute by mediation (the "Mediation") in accordance with the terms of the Agreement.

IT IS AGREED BY THOSE SIGNING THIS AGREEMENT THAT:

THE MEDIATION

1. The Parties agree to attempt in good faith to settle the issues forming the subject matter of a Dispute between the parties by Mediation pursuant to this Agreement.

ROLE OF MEDIATOR

2. The Mediator will:
 - 2.1. attend any meetings with any or all of the Parties preceding the mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;
 - 2.2. read each Case Summary and all the Documents sent to him before the Mediation
 - 2.3. seek to assist the parties in compromising and settling the Dispute by a process of conciliation and discussion during the course of the Mediation.
 - 2.4. Chair and determine the procedure at the Mediation and have the overall conduct of the Mediation and shall be entitled to make such direction about the procedure to be followed at the Mediation as he thinks appropriate.

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3. The Mediator will not during the currency of this agreement, or at any time thereafter, act for any of the parties in any capacity in relation to any aspect of the dispute. The parties accept that in relation to the dispute the Mediator is not acting as agent of, or otherwise acting in any capacity on behalf of, any of the Parties.

PARTICIPANTS

4. The parties and their respective representatives shall attend the Mediation place at the place and time set out above.
5. The parties will inform the Mediator prior to the date of Mediation of all persons attending the Mediation on behalf of each Party, including any representatives or counsel.
6. The parties agree that their lead negotiators will be sufficiently senior and have the full authority of their respective Parties to settle the dispute (if the Mediation progresses successfully) without having to refer to anybody else. If there is any restriction on that authority, this will be discussed with the Mediator before the Mediation begins.

LANGUAGE

7. The language of the Mediation will be English. Any Party producing documents or participating in the Mediation in any other language will provide the necessary translation agents and interpretation facilities.

RECORDING/TRANSCRIPT

8. No video or audio recording or transcript of the Mediation will be made by the Mediator and the Parties shall not make any video or audio recording or transcript of the Mediation.

EXCHANGE OF CASE SUMMARIES AND DOCUMENTS

9. The Parties agree to make available for the mediation the following:
 - 9.1. A Case Summary of the Dispute; and
 - 9.2. A Mediation Bundle limited to those which are essential to the Mediation (including if appropriate pleadings, witness statements and experts reports (if any), core documents, and any without prejudice correspondence); and
 - 9.3. A Position Statement as to each party's case in the Dispute
 - 9.4. A Costs Estimate of each party's costs incurred to the date of the mediation and estimated costs to trial or hearing.
10. The Parties should exchange the Case Summary and the other documents with each other at least two weeks before the Mediation, or such other date as may be agreed between the Parties and the Mediator, and send copies directly to the Mediator on the same date.
11. The Parties shall agree if possible the contents of the Case Summary and the contents of the Mediation Bundle.
12. If either the Case Summary or the Mediation Bundle cannot be agreed the parties should in any event agree
 - 12.1. The maximum number of pages of each Case Summary; and/or
 - 12.2. The maximum length of each set of documents required for the Mediation.
13. Each Party shall prepare and send to the other Party and to the Mediator sufficient copies of:
 - (1) separate concise Case Summary of its case in the dispute; and
 - (2) a bundle of all the Documents to which the Case Summary refers and any others to which it may want to refer in the Mediation

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14. If a party wishes the Mediator to read any document which they do not wish to be disclosed to the other side:
 - 14.1. the document may be submitted to the Mediator either before or at the Mediation
 - 14.2. the document must in any event be clearly marked with the identity of the party submitting it and the fact that it is confidential to that party.
15. It is agreed that the Mediator may treat any document not so marked as above as not being confidential.

WITHDRAWAL FROM MEDIATION

16. Any Party may withdraw from the Mediation at any time and shall immediately inform the Mediator and the other representatives in writing.

ADJOURNMENT

17. 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.

CONCLUSION OF MEDIATION

18. The Mediation shall terminate either:
 - 18.1. if, and when, a written settlement agreement is concluded; or
 - 18.2. the anticipated duration of the Mediation expires without the parties expressly or by implication agreeing to it continuing; or
 - 18.3. any party withdraws from the Mediation (unless it is agreed expressly or by implication that the Mediation should continue between the other parties); or
 - 18.4. the Mediator concludes that continuing the Mediation is unlikely to result in a settlement; or
 - 18.5. if the Mediator decides that it is undesirable or inappropriate for any other reason to continue with the Mediation.
19. Without prejudice to the generality of the foregoing the Mediator may terminate a Mediation if he considers that he is being asked by a party to convey statements to, or withhold information from, another party such that the other party could or might be entitled to have any subsequent agreement set aside or is otherwise considered by the Mediator to be acting in a manner compromising or likely to compromise the fair and proper conduct of the Mediation.

SETTLEMENT FORMALITIES

20. No terms of settlement reached at the Mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.
21. If so requested by the parties, the Mediator will assist the parties in drawing up any written agreement embodying agreed terms but the responsibility for those terms and the correct embodiment thereof is the sole responsibility of the parties and/or their legal advisers.

RECOMMENDATION

22. If the Parties are unable to resolve the matter through negotiations at the Mediation, and if all the Parties so request and the Mediator agrees, the Mediator will produce for the Parties a non-binding recommendation on how the matter can be resolved. This will not attempt to anticipate a court might order but will set out what the Mediator suggests may be an appropriate outcome in all the circumstances.

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CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS

23. Every person involved in the Mediation:
 - 23.1. will keep confidential all information arising out of or in connection with the Mediation, including the fact and terms of any settlement, but not including the fact that the Mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement; and
 - 23.2. acknowledges that all such information passing between the Parties, the Mediator, however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
24. Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
25. The Parties will not call the Mediator as a witness, nor require them to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the Mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process. If any Party does make such an application, that Party will fully indemnify the Mediator in respect of any costs any of them incur in resisting and/or responding to such an application, including reimbursement at the Mediator's standard hourly rate for the Mediator's time spent in resisting and/or responding to such application.

EXCLUSION OF LIABILITY

26. The Mediator shall not be liable to the Parties for any act or omission in relation to the Mediation unless the act or omission is proved to have been fraudulent or involved wilful misconduct

RETENTION OF DOCUMENTS

27. The Mediator shall be under no obligation whatever to retain any documents or electronic records made or obtained for the purposes of the Mediation. The Mediator may destroy or delete such materials at any time after termination of the Mediation.

FEES AND COSTS OF THE MEDIATION

28. The Parties will be jointly and severally responsible for the fees and expenses of the Mediator ("the Mediation Fees") as agreed (including any provision for additional hours if the Mediation process extends beyond the allocated hours).
29. Unless otherwise agreed by the Parties in writing, each Party agrees to share the Mediation Fees equally and also to bear its own legal and other costs and expenses of preparing for and attending the Mediation ("each Party's Legal Costs").
30. Each Party further agrees that any court or tribunal may treat both the Mediation Fees 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 settlement of their dispute.
31. The Mediator's fee for preparation and the Mediation, and (where applicable) the Room Charges are payable in full regardless of the actual duration of the Mediation and whether or not the Mediation actually takes place (unless the only reason for the Mediation not taking place is the indisposition of the Mediator). The additional fees for the Mediator and Room Charges are payable for each hour or part of an hour that the Mediation exceeds the anticipated duration. Unless otherwise agreed in writing with the Mediator, the Mediator's fee and the room charges must be paid before the commencement of the Mediation and any additional fee or charges must be paid within 7 days of the submission of an invoice.

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ACCOMMODATION

32. Unless prior arrangements have been made in writing for rooms to be provided at 6 Pump Court Temple London EC4Y 7AR, and the Room Charges have been paid in accordance with this agreement, the responsibility for the provision of, and payment for rooms and refreshments for the duration of the Mediation lies with the Parties and the Mediator will not be under any responsibility therefore.

GOVERNING LAW

33. This Agreement is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

LEGAL STATUS AND EFFECT OF THE MEDIATION

34. Should the Mediation not result in the settlement of the dispute, the parties will remain free to pursue such rights and remedies in respect of the dispute as they would have enjoyed in the absence of the Mediation.
35. The referral of the dispute to the Mediation does not affect any rights that exist under Article 6 of the European Convention of Human Rights, and if their dispute does not settle through the Mediation, the Parties' right to a fair trial remains unaffected.

STAY OF PROCEEDINGS

36. Any 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.

AUTHORITY AND STATUS

37. The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf at the Mediation to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.

SIGNED

NAME

ON BEHALF OF

**AND
SIGNED**

NAME

ON BEHALF OF

AND

SIGNED

THE MEDIATOR