

MEDIATION AGREEMENT

Mediation Number: IM/22/

COMMENCEMENT OF MEDIATION CONFIDENTIALITY: 2022

DATE OF MEDIATION DAY: 2022

PARTIES:

A. _____ of _____ ("Party A")

B. _____ of _____ ("Party B")

(collectively "the Parties")

MEDIATOR:

(NAME OF MEDIATOR) ("the Mediator")

DISPUTE:

Matters which are the subject of proceedings in the High Court of Justice, Division, Claim no. ("the Dispute").

The Parties have agreed to submit the Dispute to mediation ("Mediation") with the Mediator under the terms of this agreement ("Mediation Agreement").

IT IS AGREED THAT:

Venue, date & time

1. The Mediation will comprise:
 - 1.1 the preparation work for the Mediation which will commence on the date set out above and in paragraph 5 of the Mediation Details ("Commencement of Mediation Confidentiality") and
 - 1.2 the initial day(s) of the Mediation including any extra hours ("Mediation Day") which will take place on the date, at the time and at the place set out above and in paragraph 1 of the attached schedule ("Mediation Details"); and
 - 1.3 any communications between the Parties, or between any of the Parties and the Mediator after the Mediation Day (if the Mediation is not terminated on the Mediation Day) until the termination of the Mediation (see clause 11 – Mediation Termination).

Representatives

2. The Parties will be represented at the Mediation as set out in paragraph 2 of the Mediation Details.

Parties (including authority)

3. Each Party will:
 - 3.1 ensure that at least one of its attendees at the Mediation has full authority to negotiate, compromise and settle the Dispute.
 - 3.2 inform the Mediator and each other immediately if there is any change to their attendees.
 - 3.3 attempt to agree a bundle of relevant documents ("Documents Bundle") and supply the Mediator with the Documents Bundle by the date set out in paragraph 3 of the Mediation Details.
 - 3.4 exchange with each other and supply the Mediator with a confidential mediation position statement by the date set out in paragraph 3 of the Mediation Details.
 - 3.5 pay its share of the Mediator's fees as set out in paragraph 4 of the Mediation Details.

Mediator

4. The Mediator will:
 - 4.1 assist the Parties to compromise and resolve the Dispute.
 - 4.2 determine procedure at the Mediation, in consultation with the Parties.
 - 4.3 assist (if requested) in drawing up any settlement agreement.
 - 4.4 decline hereafter to act for any Party in any capacity in connection with the Dispute.
 - 4.5 maintain and respect the confidentiality of all information provided to him by the Parties, save as may be required by law, whether under the Proceeds of Crime Act 2002 and/or any Regulations relating thereto or otherwise.
5. The Parties accept and agree that the Mediator acts as an independent contractor and not as an agent of, or in any capacity for, any Party, and that the Mediator has no personal or financial interest in the subject matter of the Dispute.
6. In no circumstances shall any Party or their advisers or representatives take any steps in any jurisdiction to require or compel the Mediator or Independent Mediators Limited either to act as a witness in any proceedings connected in any way with the Mediation or the subject matter of the Dispute, or to disclose any documents or notes they may have prepared in connection with the Mediation. The Mediator or Independent Mediators Limited will not voluntarily act as a witness for, or advisor to, any of the Parties.
7. If, notwithstanding the provisions of clause 6 above, any Party seeks to require or compel the Mediator or Independent Mediators Limited to act as a witness in any proceedings connected in any way with the Mediation or the subject matter of the

Dispute, that Party shall indemnify the Mediator or Independent Mediators Limited for all his/her time, costs and expenses arising out of, or in connection with, such action.

8. The Mediator or Independent Mediators Limited shall not be liable to any Party or their representatives or advisers for any view expressed by them during or in connection with the Mediation or for any act or omission in connection with their conduct of the Mediation unless the view expressed or the act or omission is shown to have been in bad faith or in breach of this agreement.
9. Unless otherwise agreed in writing, the Mediator's liability to the Parties in contract, tort or otherwise for any act or omission in relation to the Mediation shall in any event be limited to £10 million (being the limit of the Mediator's professional indemnity insurance cover) unless the act or omission is proved to have been fraudulent or involved wilful misconduct.

Binding agreement

10. No settlement agreement reached between the Parties as a result of the Mediation shall be legally binding until it has been reduced to writing and signed by or on behalf of the Parties.

Termination

11. The Mediation shall terminate ("the Mediation Termination") when:
 - 11.1 a written settlement agreement is executed by the Parties, or
 - 11.2 any Party withdraws from the mediation, or
 - 11.3 the Parties and the Mediator agree that the Mediation should terminate either at the end of the Mediation Day, or later if it continues beyond the Mediation Day or
 - 11.4 the Mediator decides, and notifies the Parties (whether on the Mediation Day or thereafter) that continuing the Mediation is unlikely to result in a settlement or is undesirable or inappropriate for any reason.

Confidentiality & privilege

12. The Parties and the Mediator shall keep confidential and regard as privileged, and shall not use, any information of any nature produced for, arising out of, or in connection with, the Mediation including:
 - 12.1 all communications of whatever nature between the Parties and the Mediator concerning negotiations for the settlement of the Dispute whether during the Mediation or thereafter; and
 - 12.2 what happened and what was said at the Mediation and the terms of any settlement (unless the settlement agreement has its own confidentiality terms in which case those terms will prevail); and
 - 12.3 all documents, correspondence or information (in any format) produced for, arising out of, or in connection with, the Mediation.

("Confidential Information"), save as may be:

 - 12.4 necessary to implement or enforce any settlement agreement or;
 - 12.5 required by law or;

- 12.6 disclosed to professional advisors, insurers and reinsurers, if strictly necessary and for bona fide reasons, and on the basis that the recipient is informed of the confidentiality of the information and agrees to maintain that confidentiality.
13. All Confidential Information will be treated as privileged, and shall not be admissible as evidence or be disclosable in any proceedings connected in any way with the subject matter of the Dispute, unless such documents or information would have been admissible or disclosable in any event or unless otherwise ordered by court of competent jurisdiction.
14. No formal record, transcript or mechanical, electrical or digital recording of the Mediation shall be made.
15. Each Party shall ensure that all those present at the Mediation on its behalf or at its invitation and any person in receipt of any Confidential Information from that Party agrees to be bound by clauses 12 to 14 of this agreement.

Costs of the Mediation

16. The Mediator's fees, costs and expenses as set out in paragraph 4 of the Mediation Details ("Mediator Fee") and each of the Parties' own costs and expenses arising out of the Mediation ("Mediation Costs") shall be treated as follows:
- 16.1 Subject to clause 16.5 below and unless agreed otherwise in any settlement agreement, each Party shall bear its own share of the Mediator Fee.
- 16.2 Each Party will pay its share of the Mediator Fee within 30 days of the issue of an invoice by the Mediator.
- 16.3 The solicitors to the Parties are liable for the payment of their respective client's share of the Mediator Fee.
- 16.4 If there is a settlement at the Mediation:
16.4.1 the Mediator Fee will be borne by the Parties as set out in clause 16.1;
and
16.4.2 the Mediation Costs will be borne by the Parties in accordance with the terms as to those costs agreed between the Parties and set out in the settlement agreement.
- 16.5 If there is no settlement at the Mediation, the Mediator Fee and the Mediation Costs of each of the Parties are to be treated as costs in the case in any litigation or arbitration in which the court or the arbitrator has power to assess, or make orders as to, costs.
- 16.6 If any Party cancels the Mediation, the following proportion of the Mediator Fee will be payable by each Party:
16.6.1 if the cancellation is made two or less working days before the date of the Mediation, the full Mediator Fee including any preparation time; or
16.6.2 if the cancellation is made three to five working days before the date of the Mediation, 50% of the Mediator Fee including any preparation time;
or
16.6.3 if the cancellation is made six to ten working days before the date of the Mediation, 25% of the Mediator Fee with no preparation time;

in each case without prejudice to a Party's right to recover such sums from any Party it may consider to be at fault for the cancellation.

Law & jurisdiction

17. The Mediation and this agreement shall be governed by and construed in accordance with English law, and the courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the Mediation or this agreement.

SIGNED:

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for Party A

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Solicitor for Party A

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for Party B

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Solicitor for Party B

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The Mediator

Standard document revised July 2022