

AGREEMENT FOR MEDIATION

Between:

(1) CLAMAIN COMPANY of ADDRESS (Claimant)

(2) DEFENDANT COMPANY of ADDRESS (Defendant)

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

(3) Robin Somerville (“the Mediator”)

PARTIES AGREEMENT TO MEDIATE

We, the parties and the Mediator, agree 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 and 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 or decide 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 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.
- 2.6 The Mediator confirms and warrants that he is fully trained or accredited in the field of ADR work in which he 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 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, or virtually such as by video conference or similar, then the parties will make whatever arrangements are required. If the Mediator can be of assistance in providing a technology platform to conduct the mediation, the parties should make enquiries with him to do so.

4. Fees

4.1 The Mediator's fee per party plus VAT is set out in the quotation sent to the parties.

4.1.1 Payment of the fee is required to secure the diary of the mediator and is non-refundable.

4.1.2 Following the conclusion of the mediation, the balance of the fees, if any, together with any additional charges payable pursuant to clause 4.5 of this agreement, shall be paid by the parties to the Mediator, no later than 14 days after receipt of an invoice.

4.2 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.

4.3 VAT is payable on all fees and charges at the applicable rate from time to time.

4.4 In the event of late payment of any sum, interest shall accrue on the said sum at the rate of 8% above Barclays Bank base rate from time to time until payment and shall be added to the outstanding account.

4.5 Additional charges shall be payable by the parties in respect of:

4.5.1 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.

4.5.2 Additional preparation time by the Mediator occasioned by cancellation or adjournment by a party, to be calculated pro rata to the mediation fee;

4.5.3 Any agreed expenses of the Mediator;

4.5.4 Any incidental expenses, including venue hire, refreshments, and any other disbursements, if any, together with a handling fee of 20%.

4.5.5 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 a re-scheduling of the mediation for whatever reason, the parties and the mediator agree that there shall be a rescheduling fee as follows:

5.1.1 In the event of notice of re-scheduling given to the Mediator 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 50% of the Mediator's fees, plus any additional charges incurred pursuant to clause 4.5, or

- 5.1.2 In the event of notice of re-scheduling given to the Mediator less than 7 days (including non-working days and weekends) before the mediation, there shall be a re-scheduling fee in the sum of 100% of the Mediator's fees, plus any additional charges incurred pursuant to clause 4.5.
- 5.2.1 In the event of the cancelling of the mediation otherwise than by the Mediator, whenever and for whatever reason, the parties and the mediator agree that no refund will be due.
- 5.2.2 Notice of cancellation or re-scheduling shall be given to the Mediator by email to mail@robinsomerville.co.uk.

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 the Mediator will not 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 the Mediator or any other person attending the mediation 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.
- 9.1.1 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

Name of Party 1:.....

Signed:.....

Date:.....

I have read, understood the meaning and effect of this agreement and agree to it.

Name of Party 1 legal representative:.....

Signed:.....

Date:.....

I have read and understood the meaning and effect of this agreement and agree to it. I undertake to ensure that my client's fees are paid to the Mediator in accordance with the terms of this agreement, and acknowledge that I will be liable for the costs of the mediation and any additional costs as set out in this agreement.

Name of Party 2:.....

Signed:.....

Date:.....

I have read, understood the meaning and effect of this agreement and agree to it.

Name of Party 2 legal representative:.....

Signed:.....

Date:.....

I have read and understood the meaning and effect of this agreement and agree to it. I undertake to ensure that my client's fees are paid to the Mediator in accordance with the terms of this agreement,

and acknowledge that I will be liable for the costs of the mediation and any additional costs as set out in this agreement.

For and on behalf of the Mediator:

Name:.....

Signed:.....

Date:.....