

This Agreement is made the [] day of [] 20[]

PARTIES:

Party A

.....

Party B

.....

[Party C etc

.....]

(Together referred to as “the Parties”)

The Mediator

.....

In relation to a mediation to be held

On

At

(“The Mediation”)

Concerning a dispute between the Parties in respect of

.....

.....

.....

.....

(“The Dispute”)

WHEREAS:

Party A, Party B, Party C etc (referred to herein as “the Parties”) have agreed to submit the Dispute to mediation by the Mediator

IT IS AGREED by those signing this Agreement that:

1. The Parties hereby appoint the Mediator, and the Mediator accepts the appointment, to mediate the Dispute in accordance with the terms of this Agreement.

GENERAL

2. This document contains the entire agreement between the parties as to the subject matter hereof. This Agreement may be signed in counterparts, in which event the originals counterparts together will constitute the entire agreement between the parties.
3. Neither this Agreement, nor the Mediation, will affect or impair the rights of either party under the Laws of England and Wales. Should the dispute not be settled by mediation the parties' rights to a fair trial remain unaffected.
4. In the event that no settlement is reached by the Parties, all the Parties' rights shall be reserved and shall remain in all respects unaffected by the Mediation save to the extent provided in this Agreement.

COOPERATION

5. The Parties will attempt in good faith to resolve the Dispute by mediation and will take all such steps as may be necessary to participate fully in the mediation process, including the taking of all preparatory steps for the mediation appointment.

AUTHORITY

6. Each Party warrants that the signatory to this Agreement has the authority to bind the respective Party and all others present at the mediation appointment on that Party's behalf to observe the terms of this Agreement.
7. Each of the parties shall be represented at the Mediation by such person or persons that it chooses but such representatives shall include a person with full

authority to settle all or any aspects of the Dispute and to agree to any other matters that may assist or cause the efficient and economic resolution of the Dispute. If either of such authorised representatives has any limitation on his or her authority to settle, this shall be disclosed to the Mediator before the Mediation begins.

8. Each of the parties warrants that it will procure that its representatives will in particular comply fully with the clause contained within the Confidentiality section of this Agreement.

CONDUCT OF THE MEDIATION

9. The Parties shall be responsible in respect of any booking of accommodation, equipment hire or the like which the Parties may require for the purposes of the Mediation.
10. The Mediator may in his absolute discretion give such directions for the conduct of the Mediation as he thinks fit. Such directions shall be communicated in writing to the Parties' Representatives ("The Representatives") for the time being as soon as reasonably practicable.
11. Any Party may at any time withdraw from the Mediation by notifying the Mediator and the other Party/Parties in writing.
12. The Mediation shall take place as set out above. If the Dispute has not been resolved at the end of the time allotted then, with the agreement of all the Parties and the Mediator, the appointment may be continued or may be resumed at such time and place as the Parties and the Mediator may agree.
13. The procedure at the Hearing shall be determined by the Mediator in consultation with the Representatives. In the event of any disagreement the decision of the Mediator shall be final.

CONFIDENTIALITY

14. The Parties, their Representatives, their advisers and the Mediator shall keep confidential and shall not reveal save as required by law and insofar as may be necessary to bring into effect or enforce the settlement agreement:

- 1) any written summaries of the Parties' cases;
- 2) any statements whether oral or written made in the course of the Hearing;
- 3) any concessions or admissions of law or fact;
- 4) that any settlement has been reached.

15. The entire process of the Mediation (including all communications and meetings between the parties and/or the Mediator and the representatives of any of them prior to the date of this Agreement) shall be confidential and shall be treated as though the same was a negotiation conducted upon a "without prejudice" basis with a view to settling proceedings and shall be privileged according to law.

16. All documents, submissions and statements made or produced for the purposes of the mediation whether oral or written shall be inadmissible and not subject to disclosure in any arbitral, judicial or other similar proceedings except that evidence which is otherwise admissible or disclosable shall not become inadmissible or non-disclosable by reason of its use in connection with this mediation.

17. No recording, transcript or other verbatim record shall be made or kept of the Mediation.

18. None of the parties may have access to the Mediator's notes;

19. The Mediator shall keep confidential any private communications made to him by the parties at any stage unless and until whichever of them who made such communication agrees otherwise.

20. Save as provided herein or otherwise agreed by a written agreement between them, the parties reserve their legal rights should the mediation not result in a settlement of all of the Disputes.

THE MEDIATOR

21. The Mediator may not act for the parties in any capacity with regard to the subject matter of the mediation, and the parties acknowledge that in acting under this agreement, the Mediator is not representing or giving legal advice to, nor assessing, upholding or protecting (or attempting to assess, uphold or protect) any rights of, either party;

22. The Mediator shall be neutral and impartial. The Mediator shall help the Parties to develop and explore options for resolution of the Dispute and, if possible, achieve expeditious resolution of the Dispute by agreement between them.

23. The Mediator makes no representation that any such agreement between the Parties will be equivalent to any result which might be achieved in any contested court or arbitration proceedings concerning the Dispute or any part of it.

24. The Parties shall not be permitted to rely upon any expression of opinion, advice or comment made by the Mediator in the course of the Mediation in or for the purposes of any legal or similar proceedings or any form of alternative dispute resolution in relation to the Dispute or any matter related to or concerning the subject matter of the Mediation.

25. The Mediator shall not make decisions for any Party nor impose a solution on either of them. Where the Parties request the Mediator to express an opinion or propose a way forward on any matter before or during the course of or after the Mediation, then such opinion or proposal will be given orally and in private to each party unless the parties agree otherwise.

26. The Mediator retains the discretion at any time to choose not to deliver such an opinion or proposal, and/or to withdraw as Mediator completely, and is not required to provide reasons to the parties for this decision.
27. In formulating an opinion, the Mediator is entitled to rely on his own knowledge and experience as well as well as information provided during the Mediation. Any such opinion expressed by the Mediator will be non-binding, unless the parties agree otherwise. Such a recommendation will not attempt to anticipate what a court or arbitrator might order or award but will set out what the Mediator suggests are appropriate ways of resolving any outstanding issues or possible settlement terms in all of the circumstances of the Dispute.
28. The Mediator shall not obtain advice or an opinion on any aspect of the Dispute from any person.
29. The Mediator acknowledges that, before beginning the mediation, he has disclosed to the Parties any prior dealings that he has had with either of them and any other matters that may be thought to cause any doubt as to his impartiality.
30. If, during the mediation, the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator shall immediately inform both/all the parties of that development. The Mediator shall not be required to provide the nature of the circumstances in question if, to do so, would be to disclose private communications made to him by a Party unless and until whichever of them who made such communication agrees otherwise. The parties shall then decide whether the mediation will continue with the Mediator, or with a new mediator appointed jointly by the parties.
31. The Mediator shall not accept any appointment in relation to any arbitral or judicial proceeding relating to the Dispute or any part thereof.
32. The Parties will not call the Mediator as a witness nor require him to produce in evidence any records or notes relating to the Mediation in any litigation, arbitration or any other formal process arising from or in connection with either

the Dispute and/or the Mediation, nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.

33. None of the parties shall take any action that would cause the Mediator to breach his obligations contained in this Agreement.

THE MEDIATOR'S FEES AND EXPENSES

34. The Schedule of UK Mediation Fees of the Mediator as appended to this Agreement shall apply to the Mediation and is incorporated in and forms part of this Agreement. The Parties shall be responsible for the Mediator's fees, including his expenses, in accordance with this Agreement and that Schedule. Such fees and expenses shall be paid within 14 days of receipt by the parties' representatives of the Mediator's fee note.

TERMINATION

35. The mediation will terminate if:

- 1) The parties agree that it should not continue;
- 2) Save as provided for in Clause 39 below, a party withdraws from the mediation;
- 3) The Mediator feels unable to further assist the parties to achieve resolution of the Dispute; or
- 4) The Mediator considers it appropriate for any other reason;
- 5) A written settlement agreement resolving all of the Dispute is signed on behalf of the parties.

36. In the event that the Mediation is terminated before the mediation appointment or for any other reason the appointment does not take place, the Mediator shall be entitled to receive payment of any irrecoverable expenses incurred by him (for which the parties will be liable in equal shares) together with the following fees:

- 1) Termination 5 clear working days or more before the date fixed for the commencement of the Mediation appointment – No fee.
- 2) Termination 3-4 clear working days before the date fixed for the commencement of the Mediation appointment - 25% of the standard rate as set out in the Schedule of UK Mediation Fees of the Mediator.
- 3) Termination less than 3 clear working days before the date fixed for the commencement of the Mediation appointment - 50% of the standard rate as set out in the Schedule of UK Mediation Fees of the Mediator.

37. The Mediator shall not be concerned or affected by any dispute or disagreement between the Parties or any of them as to who is responsible for the termination of the Mediation appointment.

38. Termination of the mediation does not terminate Clauses 3, 14 to 21, 31 to 34, 36, 39, 42 to 43 of this Agreement, which Clauses will continue to have effect.

39. In the event of there being more than two parties to the Mediation, where one party withdraws from the Mediation, the remaining parties may give written notice to the Mediator of their agreement to continue the Mediation as between themselves. In the event of such continuance, the withdrawing Party shall remain liable for its share of the Mediator's fees and expenses as well as its equal share of any accommodation charges, equipment charges or the like for the mediation as have been incurred up to the time of its withdrawal.

40. All documents, written case summaries, written submissions, written concessions or admissions of law or fact or written statements (whether prepared specifically for the purposes of the Mediation or not) used or disclosed for the purposes of the Mediation and in the possession of the Mediator shall be destroyed if in hard copy form (unless the parties request that they are returned to them) and/or deleted if in electronic form upon the termination of the Mediation.

SETTLEMENT

41. No agreement as to the terms of any settlement reached during the mediation shall be legally binding on the parties unless and until it is reduced to writing and signed on behalf of both of them.

ENFORCEMENT

42. If the Dispute is settled, either party may:

- 1) enforce the terms of the settlement agreement for that Dispute by judicial proceedings, and
- 2) cite evidence of, and incidental to, the settlement agreement in such proceedings (other than any matters which are confidential or privileged under Clauses 14 to 16 hereof and are not essential evidence).

FEES, COSTS AND EXPENSES OF THE MEDIATION

43. Unless otherwise agreed in writing, and subject to Clause 39 above, each Party shall bear an equal share of all the costs of the Mediation (including any costs of booking of accommodation and/or equipment hire or the like for the purposes of the Mediation). However, each Party further agrees that any court or tribunal may treat the Mediator's fees and expenses, expenses and costs of the Mediation, and each Party's legal costs of the Mediation 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 the settlement of the Dispute.

GOVERNING LAW AND JURISDICTION

44. This Agreement and any settlement agreement shall be governed by the law of England and Wales and the Parties agree to submit to the exclusive jurisdiction

of the Courts of England and Wales as regards any claim or matter arising under or in relation thereto or to the Mediation.

EXCLUSIONS OF LIABILITY

45. The Mediator shall not be liable to the Parties in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever except in the case of fraudulent misrepresentation or wilful misconduct for (i) any increased costs or expenses (ii) any economic loss, loss of profit, business, contracts, revenues or anticipated savings or (iii) any other loss or damage (including but not limited to special, indirect or consequential loss or damage) of whatever nature in respect of any act or omission in connection with the services provided by him. This agreement may be produced and relied upon by the Mediator as a defence to any claim arising out of the Mediation made against the Mediator.
46. No responsibility is assumed by the Mediator for the accuracy or completeness of any advice, opinion or proposal proffered (whether intentionally or not) before or in the course of or after the Mediation or for any assistance given in or about the content or drafting of any settlement agreement and the Parties acknowledge that, unless they agree otherwise, they are not entitled to rely upon any such advice, opinion, proposal or assistance and must seek their own legal or other professional advice.
47. The Mediator acts as an independent service in the performance of his functions in connection with the Mediation and not as the servant or agent of the Barristers' Chambers known as 39 Essex Chambers and the Parties hereby expressly acknowledge that the Mediator so acts.

Signed:.....

On behalf of Party A

Signed:.....

On behalf of Party B

[Signed

On behalf of Party C etc]

Signed:.....

Mediator