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# Mediation Agreement

**ROPEWALK**  
— CHAMBERS —

Barristers regulated by the Bar Standards Board

## **MEDIATION AGREEMENT**

THE FOLLOWING PARTIES namely:

- A. ***NAME OF PARTY A*** (represented by ***REPRESENTATIVES' NAME***)
- B. ***NAME OF PARTY B*** (represented by ***REPRESENTATIVE'S NAME***)

(collectively the "Parties") hereby agree to have ***MEDIATOR'S NAME*** (the Mediator) of Ropewalk Chambers, Nottingham mediate their dispute concerning ***BRIEF DETAILS OF DISPUTE*** ("the Dispute") on the following terms and conditions:

### **1. GENERAL, ATTENDANCES, AUTHORITY TO SETTLE AND SETTLEMENT**

1.1 The Mediation will be held and conducted according to this Mediation Agreement ("the Mediation Agreement").

1.2 The Mediation meeting itself will be referred to throughout this Mediation Agreement as the Mediation.

1.3 The Parties will attempt in good faith with the Mediator and with each other to settle the Dispute.

1.4 The Parties will attend the Mediation personally or in the case of a corporation, through its authorised representative or in the case of a partnership by a Partner or other authorised representative.

1.5 Each authorised representative must have full authority of the represented Party to settle the Dispute. Any restriction on this authority must be raised with the Mediator at the earliest opportunity.

1.6 Each Party may also appoint one or more other persons (including experts and legally qualified persons) actively to assist and to advise the Party in the Mediation and to perform such role or roles in the Mediation as that Party requires and as the Mediator may request.

1.7 The Parties will inform the Mediator and each other of the identities and respective roles of all those whom they anticipate shall attend the Mediation at the earliest opportunity and shall immediately notify the Mediator and each other of any changes.

1.8 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, each of the Parties.

## **2. APPOINTMENT OF THE MEDIATOR, RECORDS AND COMMUNICATIONS WITH OR CONCERNING THE MEDIATOR**

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

2.2 All communications relating to, and at, the Mediation will be confidential and without prejudice save as set out below.

2.3 No formal record or transcript of the Mediation will be made and no notes taken by the Parties or the Mediator during the Mediation or any other evidence concerning the conduct of the Mediation will be adduced in evidence in any continuing or subsequent litigation, arbitration or other proceedings between the parties in connection with the Dispute.

2.4 Each Party will use its best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the dispute including provisions in advance of the Mediation of such documents or Information as may be requested by the Mediator.

2.5 The Parties and the Mediator recognise that the Mediator acts independently and is not an agent or employee of Ropewalk Chambers, Nottingham ("Ropewalk Chambers") or its Clerks, employees or Members.

2.6 For administrative reasons, communications with the Mediator should however be made via Ropewalk Chambers except to the extent that the Mediator has otherwise expressly agreed. Contact details can be found at [www.ropewalk.co.uk](http://www.ropewalk.co.uk) Emails sent directly to the Mediator via the Ropewalk website should be copied to [clerks@ropewalk.co.uk](mailto:clerks@ropewalk.co.uk) and should be followed up by a hard copy by fax, post or DX. Liaison as to the Mediator's future availability (for example for the purposes of Clause 9.6) should be with the Clerk to Ropewalk Chambers.

## **3. PLACE AND TIME OF THE MEDIATION**

3.1 The Mediation will take place at VENUE ADDRESS on START DATE starting at START TIME [am/pm].

#### **4. MEDIATION FEES, EXPENSES AND COSTS**

4.1 The Mediator's fee is £[ ] plus VAT for the first 8 hours from the start time stated at Clause 3.1 on the first day of the Mediation (and includes all reading, communication and other preparatory work undertaken by the Mediator and the Mediator's travelling and similar expenses) and £[ ] plus VAT for each hour (or part of an hour) beyond the first 8 hours on the first day. The Mediator's fee is £[ ] plus VAT for the first 8 hours on each subsequent day of the Mediation and £[ ] plus VAT for each hour (or part of an hour) beyond the first 8 hours on each such subsequent day. For the avoidance of doubt such daily and hourly fees are not reduced if for example the whole of the 8 hour day or the hour in question is not used.

4.2 If the Mediation is cancelled within 24 hours of the start time referred to at 3.1 above, the Parties shall be liable for the entire first day's fee, without prejudice to a Party's right to recover such sums from any other Party it may consider to be at fault for the cancellation.

4.3 If the Mediation is cancelled less than 4 working days before the start time referred to at 3.1 above, the Parties shall be liable for one half of the first day's fee, without prejudice to a Party's right to recover such sums from any other Party it may consider to be at fault for the cancellation

4.4 The Mediator's fee and any other expenses associated with the Mediation (for example in respect of the provision of rooms for and refreshments not covered by 4.6 below) will be borne equally by the Parties, unless as a result of settlement, it is agreed otherwise. The liability of the Parties (and their legal representatives) in respect of the whole of all such fees and expenses is joint and several.

4.5 Payment of each element of the Mediator's fee will be made to the Mediator at Ropewalk Chambers within 28 days of the day in respect of which it has arisen.

4.6 The costs of the provision of rooms at Ropewalk Chambers and refreshments at Ropewalk Chambers (in each case during normal office hours) are free where the Mediation involves any Member of Ropewalk Chambers as Mediator or as a representative of a Party.

4.7 The provision of rooms and refreshments at Ropewalk Chambers for any Mediation to be held there will be by arrangement made directly between the Parties and Ropewalk Chambers (via the Clerk to Ropewalk Chambers) and must be made and confirmed in writing well in advance of the

mediation. Any particular requirements (for example dietary or relating to access to Ropewalk Chambers) should be discussed with the Clerk to Chambers at the earliest opportunity.

4.8 Each Party will pay its own costs and expenses for example in instructing any legal representative or other assisting expert to prepare for, and/or to participate in, the Mediation. Unless agreed otherwise, these costs and expenses will be “costs in the case” in any continuing or subsequent litigation, arbitration or other proceedings concerning the subject matter of the Dispute.

## **5. CONSULTING WITH LEGAL ADVISERS**

5.1 A Party does not require legal representation to attend the Mediation.

5.2 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.

5.3 The Parties recognise and hereby acknowledge that the Mediator (and likewise any Observer Mediator) does not offer legal advice or act as a legal or other advisor for any of the Parties to the Mediation and will not provide any Party with a legal analysis to protect any Party's legal position or rights or otherwise.

## **6 THE ROLE OF THE MEDIATOR AND ANY OBSERVER MEDIATOR**

6.1 The Parties and the Mediator agree that

6.1.1 The Mediator will conduct the Mediation (including all preliminary steps) in the manner considered appropriate having regard to the nature and circumstances of the Dispute and the goal of an efficient and expeditious resolution of the Dispute having taken account of the views of each Party.

6.1.2 The Mediator will read the documentation provided by the Parties (“the Information”).

6.1.3 The Mediator will meet as frequently as the Mediator decides is appropriate with the Parties together or with a Party alone (including one or more individuals making up the Parties' representation) and in the latter case the Mediator need not disclose the fact of that meeting to the other Party.

6.1.4 When the Mediator holds private sessions with one Party at a time such private sessions are designed to improve the Mediator's understanding of the Party's position and to facilitate the Mediator in expressing each Party's view point to the other side.

6.1.5 The Mediator may communicate with a Party or the Parties orally or in writing.

6.1.6 The Mediator will not disclose information which is not already publicly available that is disclosed to the Mediator by one Party in the absence of any other Party except with the consent of the Party from whom the information was disclosed.

6.1.7 The Mediator will not act for any of the Parties individually in connection with the Dispute, either during the currency of this Agreement or at any time thereafter.

6.1.8 The Parties accept that in relation to the Dispute the Mediator is not an agent of, or acting in any capacity for, any of the Parties.

6.1.9 The Mediator confirms that the Mediator is unaware of any matter that might constitute a conflict of interest.

6.2 Where with the consent of all the Parties and of the Mediator an Observer Mediator attends all or any part of the Mediation

6.2.1 The Observer Mediator is present only to observe the Mediation (for the purposes of training and gaining experience) and shall not participate in any other manner.

6.2.2 The Observer Mediator is and shall remain bound by the same obligations of confidentiality as the Parties and the Mediator.

6.2.3 The Observer Mediator shall withdraw from the Mediation wholly or partly if so requested in their absolute discretion (and without having to give any reasons) by either the Mediator or of any of the Parties.

6.2.4 The Parties recognise and agree that the Mediator has no legal responsibility to any of them in respect of the Observer Mediator.

6.2.5 The Parties accept that in relation to the Dispute the Observer Mediator is not an agent of, or acting in any capacity for, any of the Parties or the Mediator.

6.2.6 The Observer Mediator confirms that the Observer Mediator is unaware of any matter that might constitute a conflict of interest.



## **7. CONFIDENTIALITY**

7.1 Each of the Parties (on its own behalf and on behalf of any person present at the Mediation at its request) and the Mediator undertake to one another that, save as may be otherwise agreed in writing by the Parties or their respective representative, they will maintain confidentiality in respect of all statements and matters arising in connection with the Mediation including its preliminary steps and in particular

7.1.1 To keep that information confidential (save only as may be required to report to the court as to whether or not the matter has been resolved and to professional advisers, insurers, Her Majesty's Customs and Excise or as required by law).

7.1.2 Not to disclose that information except to a Party or a representative of that Party participating in the Mediation (or any Observer Mediator) or if compelled by law to do so.

7.1.3 Not to use that information for a purpose other than the Mediation.

7.1.4 That the obligation of confidentiality herein contained shall bind the Parties, all those attending on their behalf and the Mediator whether or not such confidential information is or later comes to be in the public domain.

7.1.5 That no permanent transcript shall be made during the Mediation and no notes taken by the Parties during the Mediation or any other evidence concerning the conduct of the Mediator will be adduced in evidence in any subsequent proceedings between the Parties in connection with the Dispute.

7.1.6 Not to make any surreptitious recording or transmission of the Mediation.

7.2 The confidentiality provisions in this Agreement are subject to the following exceptions:

7.2.1 Confidentiality does not apply insofar as any Party needs to disclose any such statements and matters in order to comply with any statutory obligation or to obtain professional advice.

7.2.2 Without prejudice to the generality of the above, the Mediator has an absolute obligation under the Proceeds of Crime Act 2002 to report to the Serious Organised Crime Agency (SOCA) any knowledge or suspicion relating to the involvement of the proceeds of crime (including tax evasion) and is precluded by law from informing the Parties of his intention to do so.

7.3 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 and will remain subject to such negotiation privilege so long as that privilege applies and will be inadmissible in any litigation, arbitration or other proceedings in respect of the subject matter of the Dispute.

7.4 Evidence which is otherwise admissible shall not be rendered inadmissible as a result of its use in the Mediation.

7.5 The Parties will not subpoena or otherwise require the Mediator (or any Observer Mediator) to testify or to produce any records, notes or any other

information or material whatsoever in any future or continuing litigation, arbitration or other proceedings concerning the subject matter of the Dispute.

7.6 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.

7.7 Where the Mediation has taken place as a result of a Court order, the Parties agree that the Court can be notified of the fact that the case has resolved through Mediation. The notification will come from the Parties and take the form of a letter agreed between the Parties at the conclusion of the Mediation. The notification will not disclose the terms of any Settlement, unless otherwise agreed by the Parties.

7.8 All documents, statements, information and other material produced prior to or during the course of the Mediation, save to the extent those documents disclosed already and 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.

## **8. PROVISION OF INFORMATION**

8.1 Each Party may send Information and documentation which it wishes to disclose to the Mediator. If a Party wishes to disclose any Information in advance of the Mediation in confidence to the Mediator, that party must clearly state that such Information is confidential to the Mediator. The Mediator may reveal all or part of such Information to the Observer Mediator (if any).



## **9. TERMINATION OR ADJOURNMENT OF THE MEDIATION**

9.1 Any of the Parties shall be entitled, in its absolute discretion, to terminate the Mediation at any time without giving a reason for doing so.

9.2 A Party who decides to withdraw from the Mediation shall immediately inform the Mediator and any other Party.

9.3 If, after consultation with the Parties, the Mediator forms the view that he will be unable to assist the Parties to achieve resolution of the Dispute or for any other reason in his discretion, the Mediator may immediately terminate his engagement as Mediator by immediately informing the Parties.

9.4 The Parties or the Mediator may, at any time, adjourn the Mediation in order to consider further information or specific issues raised during the Mediation, obtain further information or for any other reason which the Parties or the Mediator consider helpful in furthering the Mediation process.

9.5 If the Dispute shall be unresolved at the end of the day or days on which the Mediation takes place, the Mediation may be adjourned to such time as the Parties and the Mediator agree.

9.6 The Parties and the Mediator will liaise to reconvene the Mediation.

## **10. INDEMNITIES AND WAIVERS OF LIABILITY**

10.1 In the absence of wilful misconduct or gross negligence, the Parties hereby indemnify the Mediator (and any Observer Mediator) and any servant or agent of the Mediator who may, with the consent of the Parties, be involved in the Mediation against any costs, expenses, or disbursements including legal expenses incurred by him or them responding to any attempt (whether successful or not) by that party to require him or them to give evidence and/or to provide information or documents concerning the Mediation in any litigation, arbitration or other proceedings arising out of or in any way in connection with the Mediation or the subject matter of the Dispute.

10.2 Without prejudice to clauses 6.2.4 and 6.2.5 the Mediator (and so far as might otherwise be applicable any Observer Mediator and Ropewalk Chambers, its Clerks, employees and Members) shall not be liable to the Parties or their representatives or advisers for any view expressed by the Mediator (or by any Observer Mediator) during or in connection with the Mediation or for any act or omission or default of the Mediator (or of any Observer Mediator) in connection with the Mediation

unless the view expressed or the act or omission or default is shown to have been fraudulent or in bad faith. This exclusion clause applies subject to any applicable law.

## **11. HUMAN RIGHTS**

11.1 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. If the Dispute is not settled by Mediation, the Parties' right to a fair trial remain unaffected.

## **12. LAW**

12.1 This Mediation Agreement shall be governed by, construed and take effect in accordance with the laws of England and Wales.

## **13. EXCLUSIVE JURISDICTION**

13.1 The English and Welsh courts shall have exclusive jurisdiction to determine any claim or matter of difference which may arise out of or in connection with the Mediation and/or this Mediation Agreement.

## **14. SIGNATURE OF THIS MEDIATION AGREEMENT**

14.1 This Mediation Agreement is to be signed by each Party who does not have legal representation.

14.2 This Mediation Agreement is to be signed by the legal representative of each Party who has legal representation (whether or not such legal representative may attend the Mediation) on behalf of such Party.

14.3 The legal representatives are liable for the costs of the Mediation in the same way as they would be liable for disbursements incurred in the course of litigation.

A. ***NAME OF PARTY A*** (represented by REPRESENTATIVE'S NAME)

Signed: \_\_\_\_\_

(Claimant etc)

Name: \_\_\_\_\_

(Claimant etc)

Signed: \_\_\_\_\_

(Representative)

Name: \_\_\_\_\_

(Representative)

B. ***NAME OF PARTY B*** (represented by REPRESENTATIVE'S NAME)

Signed: \_\_\_\_\_

(Defendant etc)

Name: \_\_\_\_\_

(Defendant etc)

Signed: \_\_\_\_\_

(Representative)

Name: \_\_\_\_\_

(Representative)

C. *MEDIATOR'S NAME* (The Mediator)

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

# Ropewalk Chambers

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