

Agreement to Mediate

PARTIES:

1. [Insert] ("Party A") represented by [Solicitors / Barrister as Mediation Advocate]
 2. [Insert] ("Party B") represented by [Solicitors / Barrister as Mediation Advocate]
- ("a Party" or collectively "the Parties")
3. Nigel Waddington ("the Mediator") and
 4. ADR Group Limited trading as the ADR Group of ("ADRg") ADR Group, Churchgate Lakes, Rectory Lane, Battlesbridge, Rettendon Place, Essex SS11 7QR.

IN RELATION TO:

A. DISPUTE:

Matters which are subject to proceedings in Claim No.:
County Court / Chancery Division / High Court of Justice:
or *short description of the dispute*
("the Dispute")

- B. The Mediation will be held at (venue to be confirmed) with the Mediator on [date] from (time to be confirmed) for a duration of 8 hours or such longer period as may be agreed. ("the Mediation Session")

IT IS AGREED

The Parties and any person identified in Schedule 1 as an Observer agree in consideration of the mutual covenants between them that ADRg shall administer, the Mediator shall mediate (including all preparatory and post Mediation Session activity) and the Parties shall seek to resolve the Dispute through mediation on the following terms and conditions ("the Mediation").

1. THE RULES

The Mediation shall be held and conducted according to this Agreement to Mediate and the Rules of ADRg in effect ("the Rules"). The current version of the Rules are attached as Schedule 2.

2. COMMENCEMENT AND TERMINATION OF THE MEDIATION

- 2.1 The Mediation shall be deemed to have commenced on the date and time determined by the Mediator.
- 2.2 The Mediation shall be deemed to continue until any one of the following occurs:
- 2.2.1 when a written Settlement Agreement is executed and signed by the Parties;
 - 2.2.2 a written notice of withdrawal is given by any Party;
 - 2.2.3 the time set for the Mediation has expired without agreement for continuation or resumption;
 - 2.2.4 the Mediator decides, at his/her absolute discretion, and notifies the Parties, that continuing the Mediation is unlikely to result in a settlement or is otherwise undesirable; or
 - 2.2.5 the Mediator decides that he/she should retire for any of the reasons set out in the Code of Practice of ADRg.
- 2.3 The Dates and Times of the commencement and termination of the Mediation and the reason therefore shall be recorded by the Mediator in the Mediation Record.
- 2.4 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. ADRg will liaise with the Parties and the Mediator to reconvene or resume the Mediation.

3. PROCEDURES

- 3.1 Each Party shall supply the Mediator with an outline of their case and supporting documents at least 7 clear business days before the Mediation.
- 3.2 A Party does not require legal representation to attend the Mediation. Where a Party is not legally represented, they are advised to obtain independent legal and tax advice before the Mediation and prior to finalising any agreement reached pursuant to the Mediation.
- 3.3 The Parties recognise that neither ADRg nor the Mediator will offer legal advice nor act as a legal advisor for any Party nor will they provide any Party with a legal analysis with respect to a Party's legal position or rights.
- 3.4 The Parties will participate in the Mediation personally or in the case of businesses, corporations or other legal entities, through their authorised representatives. The Parties will be represented in the Mediation as set out in Schedule 1.
- 3.5 Each Party warrants that at least one of its representatives has full and unlimited legal authority to bind that Party to settle the dispute on its behalf. Any restriction on this authority must be notified in writing to the Mediator and ADRg prior to commencement of the Mediation.
- 3.6 Any settlement reached in the Mediation will not be legally binding until it has been reduced to writing in a Settlement Agreement and signed by, or on behalf of, each of the Parties.

4. PRIVATE SESSIONS AND MEDIATOR CONFIDENTIALITY

- 4.1 The Mediator may hold private sessions with each Party and/or their representatives.
- 4.2 Subject to applicable provisions in The Rules information received by the Mediator through such sessions shall be and shall remain confidential with the Mediator save that (a) it is in any event publicly available or (b) the Mediator is specifically authorised by that Party to disclose it to the other Party and/or their representatives.
- 4.3 The Mediator may request of the Parties that he/she be permitted to bring an observer to the Mediation for mediator training purposes. ("the Observer"). It shall be at the sole discretion of each Party whether to grant that request. If an Observer does attend, then the Observer shall be bound by the terms and conditions of this Agreement to Mediate and the Rules on the same basis as the Mediator.

5. MEDIATION FEES, EXPENSES AND COSTS

- 5.1 ADRg's fees (which include the Mediator's fees) and any other expenses associated with the Mediation will be borne equally by the Parties, unless agreed otherwise.
- 5.2 The amount and payment conditions for such fees and expenses shall be as set out in the correspondence confirming the Mediation and ADRg's invoice.
- 5.3 The full fees shall be due and payable if the mediation is cancelled by either Party within 24 hours of the agreed scheduled date and time and 50% of the fees shall be due and payable if the mediation is cancelled by either Party within 7 days of the agreed scheduled date. Any expenses incurred by ADRg or the Mediator in anticipation of the mediation shall be reimbursed in full.

SIGNATURE OF THIS MEDIATION AGREEMENT

This Agreement to Mediate is to be signed by the Parties, any instructed legal representative of each Party attending the mediation (if represented) and Observer and is binding upon them as of the date of signature.

A. [Insert] (represented by [Solicitor / Barrister as Mediation Advocate])

Signed: _____ (Party A)

Name: _____ (Party A)

Signed _____ (Solicitor)

Name: _____ (Solicitor)

Signed _____ (Barrister)

Name: _____ (Barrister)

B. [Insert] (represented by [Solicitor / Barrister as Mediation Advocate])

Signed: _____ (Party B)

Name: _____ (Party B)

Signed: _____ (Solicitor)

Name: _____ (Solicitor)

Signed _____ (Barrister)

Name: _____ (Barrister)

C. Nigel Waddington (The Mediator)

Signed: _____

Name: _____

Date: _____

D. (The Observer)

Signed: _____

Name: _____

Date: _____

Schedule 1

Mediation Attendance Schedule and Confidentiality Record

To be signed by the Parties, their legal representatives and other advisers, the Mediator, any Observer, and for any person attending the Mediation at the invitation of either party.

For any person attending the Mediation at the invitation of either party: although I am not a party to this Agreement to Mediate I nevertheless agree to be personally bound by clause 4.2 of this agreement and Rule 12 of the Mediation Rules of the ADR Group, respectively the confidentiality provisions.

[illegible]

Schedule 2

The Rules of ADR Group

1. The Concept
 - 1.1 The parties will attempt in good faith to settle their dispute by Mediation in accordance with the Rules and an Agreement to Mediate (“Agreement to Mediate”).
 - 1.2 By entering into an Agreement to Mediate and proceeding with the Mediation in accordance with the Rules and that agreement, unless agreed otherwise, neither party is prevented from seeking to enforce or protect their legal rights through the courts or arbitration at any time.
2. Agreement to Mediate
 - 2.1 The parties, their representatives, the Mediator and any Observer must sign an Agreement to Mediate prior to the commencement of the mediation
 - 2.2 The Agreement to Mediate governs the relationship between the parties, all those attending the mediation and the Mediator before, during and after the Mediation Session.
3. Attendance and Authority of Parties
 - 3.1 The parties and their representatives and advisers, if any, will attend the Mediation Session to be led by the Mediator.
 - 3.2 The parties and their representatives, if any, must have the authority to settle the dispute. If a party is a natural person, that person must attend the mediation session. If a party is not a natural person, it must be represented at the Mediation Session by an officer or employee with authority to make binding agreements settling the dispute. If that person comes with limited authority, he or she must disclose the extent of their limitation to the Mediator prior to the commencement of the Mediation.
4. Selection of the Mediator
 - 4.1 If so requested ADRg will provide to the parties’ details of potential mediators selected from its panel of mediators. The provision of Mediators through ADR Group and the activities of the Mediators will be governed by the Rules and the Agreement to Mediate.
 - 4.2 In making this selection consideration will be given to the subject matter of the dispute, the complexity, the value in dispute, the desired experience of the Mediator and the location of the parties.

5. The Mediator

5.1 The Mediator will:

- 5.1.1 communicate with the parties and/or their advisers jointly or separately prior to the Mediation as well as meet with them jointly or separately, if requested to do so, or if the Mediator deems it appropriate;
- 5.1.2 prior to the commencement of the Mediation Session read and familiarise him/herself with each party's Position Statement and any documents provided in accordance with paragraph 8.1;
- 5.1.3 determine the procedure for the Mediation;
- 5.1.4 maintain a Mediation Record stating the dates and times the Mediation commenced and concluded and the reasons for termination; and
- 5.1.5 abide by the terms and conditions of the Rules, the Agreement to Mediate and ADRg's Code of Conduct (European Code of Conduct for Mediators http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm, as may be amended from time to time) (the "Code of Conduct").

5.2 The Mediator may:

- 5.2.1 if a settlement is not reached and if so requested and agreed by the Parties and the Mediator render a non-binding opinion or recommendation on how a settlement may be reached.

5.3 The Mediator will not:

- 5.3.1 impose a settlement on the parties; or
 - 5.3.2 offer legal advice or act as legal adviser to any party at any time in connection with the dispute.
- 5.4 the parties and the Mediator acknowledge that the Mediator is an independent contractor and is not appointed as an agent or employee of any of the parties or ADRg. Neither the Mediator nor a member of his or her firm or business will act, or have acted, as a professional adviser, or in any other capacity, for any of the parties in connection with the dispute either before, during or after the Mediation Session.

6. Role of ADRg

6.1 ADRg will in consultation with the parties and the Mediator make the necessary arrangements for the Mediation including, as appropriate:

- 6.1.1 prepare the Agreement to Mediate;
- 6.1.2 liaise between the parties to agree a suitable date and venue;
- 6.1.3 provide the parties a Guide to Preparing Your Case for Mediation;

- 6.1.4 discuss or meet with any or all of the parties or their representatives (and the Mediator if appropriate), either together or separately, on any matter pursuant to the proposed mediation;
- 6.1.5 provide feedback on the Mediation to the Mediator as received from the Parties,
- 6.1.6 provide general administration in relation to the Mediation.

7. Representation

- 7.1 Parties do not require legal representation to attend the mediation.
- 7.2 Where a party is unrepresented, ADRg encourages such party to obtain independent legal advice in connection with the dispute and the mediation.
- 7.3 Each party will notify ADRg and other parties involved in the Mediation of the names of those people intended to be present at the Mediation Session and indicate their capacity at the Mediation as a principal, representative, adviser or any other capacity.

8. Position Statements and Documentation

- 8.1 Each party will prepare and deliver to the Mediator, seven (7) business days prior to the mediation, a concise summary ('Position Statement') of the matter in dispute, copies of documents referred to in the Position Statement and those documents which the parties intend to refer to during the Mediation.
- 8.2 The Position Statement and the documents referred to therein are private and confidential and will not be disclosed by the Mediator to the other party or to any third party unless expressly authorised to do so by the party who has provided the Position Statement.
- 8.3 There is no obligation on the parties to exchange Position Statements however they are encouraged to do so.
- 8.4 Similarly, the parties are encouraged to prepare and agree a joint bundle of documents.

9. The Mediation

- 9.1 No formal record or transcript of the Mediation will be made.
- 9.2 The Mediation is for the purpose of attempting to achieve a negotiated settlement and all information provided during the Mediation is provided without prejudice and will be inadmissible in any litigation or arbitration of the dispute subject to the provisions of any applicable law.
- 9.3 Information, which would be otherwise admissible in any such litigation or arbitration, shall not be rendered inadmissible as a result of its use in the Mediation.

- 9.4 If the parties are unable to reach a settlement during the Mediation Session, the Mediator may, if requested to do so, facilitate further negotiation after the Mediation Session itself has ended.

10. Settlement Agreement

Any settlement reached in the Mediation will not be legally binding until it has been recorded in writing and signed by or on behalf of the parties.

11. Adjournment and Termination

- 11.1 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. ADRg will liaise with the Parties and the Mediator to reconvene or resume the Mediation.

- 11.2 The Mediation shall terminate in any of the following circumstances:

11.2.1 when a written settlement is executed and signed by the parties;

11.2.2 if any or all of the parties decide not to continue;

11.2.3 the time set for the Mediation has expired without agreement for continuation or resumption;

11.2.4 the Mediator decides, at his/her absolute discretion, and notifies the parties, that continuing the Mediation is unlikely to result in a settlement or is otherwise undesirable; or

11.2.5 the Mediator decides that he/she should retire for any of the reasons set out in the Code of Conduct.

- 11.3 The Mediator will provide the Parties with written confirmation of the termination of the Mediation when the Mediation extends past the Mediation Session.

12. Confidentiality

- 12.1 Every person involved in the Mediation and ADRg will keep confidential the fact that the Mediation is to take place or has taken place and all information (whether given orally or in writing) produced for or delivered as part of the Mediation including the settlement agreement (if any) except in so far as is necessary to implement and enforce any such settlement agreement or as required by any applicable law or the provisions of any applicable insurance policy or terms of any professional engagement.

- 12.2 All documents or other information produced for, or arising in relation to, the Mediation will be privileged and will not be admissible as evidence or discoverable in any litigation or arbitration connected with the dispute. This does not apply to any information which would

in any event have been admissible for disclosure in such proceedings or as otherwise required by law including without limitation the Proceeds of Crime Act.

- 12.3 Subject to Rules 12.1 and 12.2 the parties will not subpoena or otherwise require the Mediator, any Observer, ADRg, any shareholder, director, employee, consultant or representative of ADRg ("ADRg Person") 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.
- 12.4 If a party does make such an application that party will fully indemnify the Mediator or an ADRg Person or any other person attending the Mediation in respect of any costs incurred 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 an application.
- 12.5 Where the Mediation has taken place as a result of a Court order, the parties agree that the Court shall be notified of the fact that the case has been resolved through mediation. The notification will come from the parties and take the form of a letter agreed or draft Tomlin Order 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.
- 13. Mediation Costs
 - 13.1 Unless agreed otherwise the costs of the Mediation will be borne equally by the parties and as such may be taken into account in any further legal proceedings.
 - 13.2 Each party to the Mediation will bear its own costs and expenses of its participation in the Mediation including the costs of its legal representative and advisers and unless agreed otherwise these costs will be costs in the case.
 - 13.3 Where a party has a legal representative, that legal representative will be liable for their client's share of the costs of the Mediation in the same way as they are liable for disbursements incurred in any litigation.
 - 13.4 Payment of the costs of the Mediation will be made to ADRg in advance of the mediation session and ADRg will be responsible for the payment of the fees of the Mediator. ADRg shall have the right to fix a cancellation policy with respect to costs and expenses which shall be set out in the Agreement to Mediate.
- 14. Inability or unwillingness of the parties to enter into an Agreement to Mediate
 - 14.1 If the parties have entered into a written agreement which includes a clause referring any dispute arising thereunder to mediation in accordance with these Rules then in the event of either or both parties being unable or unwilling to enter into an Agreement to Mediate, the then Managing Director of ADRg shall, without incurring any liability whatsoever towards any party on behalf of himself/herself or ADRg, determine the following elements of an Agreement to Mediate in his/her sole discretion:
 - 14.1.1 choice of the Mediator;

14.1.2 date, time and place of the Mediation;

14.1.3 the applicability of all or any of the Rules to the mediation; and

14.1.4 the mediation shall proceed accordingly.

14.2 In choosing the Mediator the then Managing Director of ADRg shall apply the considerations set out in Rule 4.2 and these Rules shall apply in all respects to the chosen Mediator.

14.3 Should either or both parties not proceed in good faith with the mediation in accordance with Rule 14.1 then the parties shall be free to adduce evidence thereof in either court or arbitration proceedings provided they may not call as a witness or otherwise seek to take evidence from an ADRg Person or the Mediator

15. Exclusion of Liability

Nothing in these Rules shall limit or exclude the Mediator's, ADRg's, or the Observer's liability for any matter in respect of which it would be unlawful for the Mediator, ADRg or the Observer to exclude or restrict liability. Subject to that proviso, neither the Mediator, ADRg, or the Observer shall be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the Mediation, unless the act or omission is fraudulent or involves wilful misconduct.

16. Human Rights

The referral of a dispute to Mediation in accordance with these Rules does not affect any rights that may exist under Article 6 or the European Convention of Human Rights.

17. Complaints Procedure

17.1 If any Party is dissatisfied with the service of ADRg and/or the conduct of the Mediator, a complaint must be filed in writing to the Managing Director of ADRg no later than 28 days from the date of the termination of the Mediation.

17.2 In the event a complaint is made in relation to the conduct of the Mediator ADRg reserves the right to withhold the Mediator's fee until such time as the complaint has been dealt with.

18. Governing Law

These Rules and any Agreement to Mediate entered into in which these Rules are incorporated by reference or attachment and any matter arising out of them shall be governed by and construed in accordance with the laws of England and Wales.

19. Dispute Resolution

Any dispute relating to the Rules and any Agreement to Mediate entered into in which these Rules are incorporated by reference or attachment and any matter arising out of them which cannot be resolved by negotiation between the parties within 30 days of either party giving notice to the other party that a dispute has arisen shall be submitted to Mediation pursuant to the Rules and failing settlement of that dispute by mediation within 30 days thereafter, the dispute shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Deputy President of the Chartered Institute of Arbitrators.