Agreement to Mediate

Agreement made the [ ] day of [ ] [ ]

Between ­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­\_\_\_\_\_\_\_\_\_\_ (“the First Party”)

and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Second Party”)

(collectively “the Parties”) and the Mediator who is named below and enters this Agreement on the basis set out in Appendix 1.

|  |  |
| --- | --- |
| Date of Mediation: |  |
| Venue: |  |
| Start Time: |  |
| Duration: | Up to [ ] hours |
| Name of Mediator:(the services of the Mediator are provided on the basis set out in Appendix 1) |  |

|  |  |  |
| --- | --- | --- |
|  | First Party | Second Party |
| Advisor representing party at Mediation:  |  |  |
| Firm/Chambers: |  |  |
| Solicitor Contact (if different from above) |  |  |
| Firm: |  |  |
| Reference: |  |  |
| Address: |  |  |
| Telephone Number: |  |  |
| E-mail: |  |  |
| Name of court and the court case reference (if applicable) |  |  |

Definitions

1. This mediation has been arranged by Northern Dispute Resolution (“NDR”) which is not a party to this Agreement.
2. The Mediator is the person named above and the services of the Mediator are provided on the basis set out in Appendix 1.

Appendices

This agreement has the following appendices:

1. The Mediator
2. Fees Schedule
3. Mediators disclosure of any prior relationships
4. Details of other persons attending

Agreement

A dispute (the “Dispute”) has arisen between the First Party and the Second Party (“the Parties”) The Parties and the Mediator agree as follows:

1. Duties and Obligations

The Parties appoint the Mediator for the mediation on the terms set out below and agree:

1.1 to mediate the Dispute on the date and at the time and venue set out above (“the Mediation”)

1.2 that the Mediator and the Parties shall follow:

1.2.1 NDR’s Mediation Procedure for the time being (a copy of which accompanies this agreement and/or is available from NDR or its website and which is hereby incorporated into this Agreement)

1.2.2 the European Code of Conduct for Mediators (“the Code”)1

1.3 that where the Mediation Procedure and the Code conflict the provisions of the Code shall prevail.

1.4 where the provisions of this Agreement conflict with either the Mediation Procedure or the Code this Agreement shall prevail.

1. Remuneration

2.1 The Parties’ obligations in respect of fees are set out in paragraph 2.7 of the Mediation Procedure.

2.2 The Parties shall make payment to the Mediator (see Appendix 1) in respect of the mediation services provided by the Mediator in accordance with the fees set out in the Fee Schedule in Appendix 2 (“the Fees”).

1. Assistant

The Observer (whose name is printed below his/her signature below) will attend as an observer (“the Observer”) as part of his/her mediation training, without fee, provided that the Parties so agree and he/she agrees, in consideration of the Parties permitting him/her to observe the Mediation that:

3.1 the provisions of this Agreement to Mediate and Mediation Procedure relating to confidentiality shall apply to him/her.

3.2 he/she will comply with the Mediation Procedure and the Code and it is agreed that save for any significant breach of same and save any wilful misconduct or gross negligence no liability shall attach to the Observer.

The Observer understands that save for the specific provisions in this paragraph such duties or responsibilities that are owed by the Mediator to the Parties shall also be owed by the Observer.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Party’s Lawyer for and on behalf of First Party

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Second Party’s Lawyer for and on behalf of Second Party

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mediator (who signs on the basis set out in Appendix 1)

­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Observer (print name in full)

1The specific URL or internet address for the Code is:

<http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf> If you are viewing an electronic copy of this Agreement you can connect to the hyperlink – control and left-click.

Appendix 1 – The Mediator

NDR’s mediators may carry out their work in the capacity as self-employed sole practitioners or as members of a firm or company: this Schedule sets out for the avoidance of doubt that status and the VAT details.

(The Mediator shall strike through the paragraphs which are inapplicable)

Where the Mediator acts as a self-employed sole practitioner

|  |  |
| --- | --- |
| Name of Mediator: |  |
| Address: |  |
| VAT registration No. (if the Mediator is registered for VAT) |  |

Please make fees payable to: ­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Where the Mediator supplies mediation services, and enters into this agreement as a member of a firm or company:

* The Mediator’s services in respect of this Agreement are provided to the Parties by the Mediator’s firm or company, details of which appear below (“the Firm” or “the Company”) and not by the Mediator in his/her personal capacity.
* Accordingly, the Mediator enters this agreement as a member of and on behalf of the Firm or the Company.
* The Firm or Company holds professional indemnity insurance in respect of the mediation services that it provides by and through the Mediator.

|  |  |
| --- | --- |
| Name of Mediator: |  |
| Name of Firm: |  |
| Registered office / address of Firm |  |
| Firm’s Company No. and country of registration or LLP No.  |  |
| VAT registration No.  |  |

Please make fees payable to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Appendix 2 – Fees Schedule

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Mediation Fee£ | Total Fees£ | VAT£ | Total£ |
| Payable by First Party |  |  |  |  |
| Payable by Second Party |  |  |  |  |

Fees should be made payable to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The above fees are based on the Fee Structure below.

All fees are subject to VAT at the prevailing rate.

1. The above fees include reading time of 2 hours per case, any pre mediation telephone discussions and correspondence, any follow up work should the parties not settle on the day of the mediation, and all administration.
2. Costs of venue/accommodation and refreshments etc. are to be provided by the Parties.
3. The fees remain payable if the Parties settle before the expiration of the anticipated time allowed for the Mediation.
4. Additional mediation time (after hours shown above): first hour, no charge; thereafter as shown in table, per hour, but only payable if agreed in advance by the Parties): £100 per hour.
5. Additional reading time (over and above 2 hours shown above, but only payable if agreed in advance by the Parties): £100 per hour.
6. Mediator’s travel expenses are capped at £50.
7. **Payment** terms:
	* the fees for the Mediation shall be invoiced in advance and payable 3 working days prior to the Mediation
	* the balance of the fees shall be payable within 28 days after the date of invoice.
	* if the fees are not paid by cleared funds before the start of the Mediation the Mediation will only proceed if the lawyers for all parties give professional undertakings that the fees will be paid within 28 days after the date of the invoice. .
8. **Cancellation** terms: a fee of 50% of the above fee, not exceeding £500, shall be paid if the mediation is cancelled, unless cancellation takes place more than 7 days prior to the mediation in which case no fee is payable.

Fees Structure

All fees are subject to VAT at the prevailing rate

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Band | Value of Dispute(The value of the dispute is the aggregate of the amount claimed and any counter-claim) | Duration of Mediation (Hours) | Mediation Fee Per Party(£) | Total Mediation Fees for Two Parties(£) | Additional Hours Per Party(£) |
| 1 | £0 - £5,000 | 1 | 50 | 100 | 50 |
| 2 | £0 - £5,000 | up to 2 | 100 | 200 | 50 |
| 3 | £5,000 - £15,000 | up to 3 | 300 | 600 | 84 |
| 4 | £15,000 - £50,000 | up to 4 | 425 | 850 | 93.50 |
| 5 | £50,000 - £250,000 | up to 8 | 1,000 | 2,000 | 100 |
| 6 | £250,000 - £500,000 | up to 8 | 1,250 | 2,500 | 150 |
| 7 | £500,000 - £1m | up to 8 | 1,450 | 2,900 | 200 |
| 8 | over £1m | up to 8 | by negotiation | by negotiation | by negotiation |

Note 1: Bands 1-4 are the former National Mediation Helpline rates and apply to all such value cases whether referred to NDR by NMH or not.

Note 2: The fees above show the fees payable in a two party dispute. For example, where the value of the dispute is between £15,000 and £50,000 (Band 4) the fee is £425 plus VAT per party, a total of £850 plus VAT for both parties.

Note 3: A further 10% will be applied for each additional party. For example, the fees in a three party dispute in Band 4 would be:

 £

Fee for two parties in Band 4 850.00 plus VAT

Add 10% 85.00 plus VAT

Total fee for three parties 935.00 plus VAT

Fee for each of the three parties 311.67 plus VAT

Appendix 3 – Mediator’s disclosure pursuant to paragraph 2.9 of the Mediation Procedure

|  |  |
| --- | --- |
| (a) All business or professional relationships which the Mediator has had with the Parties or their lawyers within the past five years, including all instances in which the Mediator has served as a lawyer for any party or adverse to any party. | None / the following |
| (b) Any financial interest the Mediator has in any party. | None / the following |
| (c) Any significant social, business or professional relationship the Mediator has/had with an officer or employee of a party or with an individual representing a party in the Mediation. | None / the following |
| (d) Any other circumstances that may create doubt regarding the Mediator’s impartiality in the Mediation.  | None / the following |

Appendix 4 – Details of other persons attending the mediation and confidentiality arrangements

I, the undersigned, in consideration of my having been given permission by the Parties or their Advisers to attend the Mediation, hereby agree that I will be bound by the Agreement to Mediate and the Mediation Procedure as though I were a Party (except for the obligation to pay fees) and in particular:

1. I will keep the affairs of the Parties and the Mediation confidential;
2. I will not refer to anything that I hear, see or learn at the Mediation at any time or in any place;
3. I will not give evidence about any of these matters; further
4. I will not seek to require the Mediator to give evidence in any subsequent litigation about the Mediation or the Dispute except in the case of an allegation of misconduct during the mediation.

|  |  |  |
| --- | --- | --- |
| Name | Address | Signed  |
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