

MEDIATION AGREEMENT

This Agreement is made the day of 20{}

BETWEEN:-

First Party represented by {}

Second Party represented by {}

(Third Party)

The First Party and the Second and other Parties (as appropriate) are hereafter together referred to as "the Parties".

1 Agreement to Mediate

The Parties agree to refer their dispute (brief particulars of which are set out in the Schedule attached hereto) to Mediation on the following terms and conditions of this Agreement and they agree to use their best endeavours in good faith to resolve their dispute by Mediation.

2 Appointment of the Mediator

The Parties appoint as Mediator for their dispute {} of Paris Smith LLP of Number 1 London Road, Southampton SO15 2AE.

3 Place and Time of the Mediation

The Mediation Hearing will take place on {} the {} day of {} 20{} at the offices of Paris Smith LLP of Number 1 London Road, Southampton SO15 2AE between the hours of {} until {} or such later time as the Parties and the Mediator shall agree upon.

4 Representatives at the Hearing

4.1 Each of the Parties to this Agreement may be represented by the representatives nominated by them as set out in this Agreement or such other representative in place of those set out as above as may be notified to the Mediator and the other Parties not less than 48 hours prior to the Mediation Hearing unless at his absolute discretion, the Mediator permits such other representatives to appear or the Parties agree that he may do so. It is agreed that the Parties will not employ more than one representative each to speak for them at the Mediation Hearing, although nothing will preclude a Solicitor representative instructing Counsel on their client's behalf.

4.2 Nothing in this section shall prevent any Party (or any employee, Officer, Partner of the Party which is a company association or partnership as the case may be) from

speaking on behalf of that Party in addition to the representative with the consent of the Mediator not to be unreasonably withheld.

- 4.3 The Parties agree that a Party does not need legal representation to attend the Mediation Hearing if they do not so wish but all Parties accept that he, she or they are advised to obtain independent legal advice prior to the Mediation Hearing and that they may do so during the Mediation Hearing as they require and they should obtain independent legal advice prior to finalising any written Agreement made as a result of the Mediation.
- 4.4 The Parties agree that none of them have or will instruct Paris Smith LLP to act as their Solicitors for them in relation to this dispute.
- 4.5 The Parties hereby warrant their respective representatives at the Mediation Hearing have full authority to settle the dispute and sign a Heads of Agreement OR Settlement Agreement to bind their clients in any form on their behalf.

5 Mediation Fees, Expenses and Costs

- 5.1 The fees of the Mediator and any other expense associated with the organisation or administration of the Mediation Hearing will be borne equally between the Parties unless the Parties otherwise agree whether as a result of the mediated settlement or otherwise.
- 5.2 Each Party will pay its own costs and expenses in instructing any representative to prepare for or participate in the Mediation on their behalf.
- 5.3 The Mediator's fee shall be paid upon presentation of an invoice from his firm in accordance with his firm's terms and conditions of trading.
- 5.4 In the event that the Parties resolve their dispute before the Mediation Hearing but after instruction of the Mediator, the Mediator and his firm shall be entitled to receive payment of any irrecoverable administration expenses in full together with the following proportion of their fees:-
Cancellation less than three working days before the Mediation Hearing = 50% of the fee;
Cancellation more than three working days in advance but after instruction and exchange of Position Statements and documentation = 20% of the fee.
[5.5 The Parties agree that if the Mediation is not successful, then any Court presently engaged in the litigation in relation to the subject matter of this dispute may treat the Mediators fee and the parties costs of Mediation as part of the costs of the case and may make orders in respect of the costs of mediation in that litigation]

6 **Confidentiality**

- 6.1 The Mediator and the Parties agree and undertake that save as may be otherwise agreed between them, they will maintain confidentiality in respect of Statements and all matters arising in the Mediation.
- 6.2 The Mediation shall be confidential and treated as though it were a negotiation between the Parties proceeding on a without prejudice basis and shall be privileged accordingly.
- 6.3 The provision for confidentiality above is subject to the following exceptions:-
- i. Disclosure of the fact that Mediation has or will take place as is necessary to keep any Court or Tribunal informed for the purpose of concurrent litigation in the subject matter of the dispute.
 - ii. Any obligation of the Parties to disclose information required by law or Statute including any obligation of the Mediator to report to the Serious Organised Crime Agency matters required by the Proceeds of Crime Act 2002.
 - iii. That nothing in this paragraph shall prevent the Parties from publishing any Statement or memo as they have agreed to do as a result of the Mediation Settlement agreed between them.
- 6.4 Written information provided for the Mediation including documents, Summaries or Statements specifically prepared and brought into being for the Mediation in written form should not be the subject of disclosure in any subsequent Court or Tribunal proceedings. Oral submission Statements or concessions of law or fact made specifically for the purposes of the Mediation shall be inadmissible as evidence in any subsequent Court or Tribunal proceedings.
- 6.5 The Parties hereby agree that they will not subpoena or otherwise require the Mediator to testify or be called as a witness in any concurrent or subsequent litigation or Tribunal or other proceedings, nor will they seek to obtain request or use the Mediator's notes made or other papers supplied to him during the Mediation.
- 6.6 Each Party agrees that any Court or Tribunal may treat the costs of the Mediation including the Mediator's fees as costs in the case in relation to any litigation or Arbitration relating to the parties dispute, where that Court or Tribunal may have power to make Orders for costs and/or assess the same.

7 **Procedure**

- 7.1 Before the Hearing, the Mediator may at his discretion direct the Parties to submit to him and exchange with each other a Summary of their position ("a Position Statement") with any supporting documents that they desire to produce. Where

possible, the Statement and the documents should be paginated. The Mediator will use his reasonable endeavours to direct that such Statement and documents shall be subject to a reasonable timetable depending upon the date of his instruction and the date of the Mediation Hearing that the Parties require or have agreed.

- 7.2 In addition, any Party may send to the Mediator any confidential documents they wish to disclose to the Mediator but which that Party desires not to be released to the other side except with their consent. Such document must clearly be marked "CONFIDENTIAL - NOT TO BE RELEASED TO THE OTHER PARTIES WITHOUT SPECIFIC CONSENT".
- 7.3 In addition, each Party shall prepare and send to the Mediator (and to each other if they so decide) a Statement of the legal costs that they have expended to date in relation to the subject matter of their dispute and a Statement of the legal costs that they reasonably believe that they will incur if the matter proceeds to a trial or other subsequent Hearing in any litigation process. Where possible, such Statements should contain a breakdown as between profit costs and disbursements and a Statement of the nature of the intended disbursements, and a breakdown of the extent of the profit costs sufficient to enable the Mediator and the other Parties to understand how each Party reaches the figure it puts forward.
- 7.4 The Mediator may at his absolute discretion give such further or other Directions for the conduct of the Mediation as he shall think fit in the particular circumstances of the dispute of the case to be mediated.
- 7.5 The Parties agree that the Mediator may (if he so requires) telephone the Parties (or their representatives) prior to the Hearing to improve his understanding of their position and to enable him to express their views more accurately to the other Parties if he is required to do so. Such call or calls shall be subject to the provisions of this Agreement on confidentiality. In addition, the Mediator will not disclose the content of the telephone call with each Party to the other Parties unless he is authorised to do so.
- 7.6 The procedure at the Hearing shall be determined by the Mediator in consultation with the representatives or the Parties themselves and in the event of any dispute, shall be decided upon by the Mediator at his discretion.
- 7.7 The Parties agree that the Mediator may hold private sessions with any Party at any time during the Mediation Hearing to improve the Mediator's understanding of that Party's position and to facilitate the Mediator in expressing the views of that Party to the other Party or Parties. Any information so gathered is confidential unless the Mediator is specifically authorised by the Party giving that information to disclose it or

unless such information is publicly available. Such information gathered is also subject to the provisions of confidentiality in this Agreement.

7.8 Mediation Hearings shall take place at the date, time and place set out above. If the dispute has not been resolved at the end of the time allotted, the Hearing may be adjourned or resumed at a later date at such time, date and fee as the Parties and the Mediator may agree.

7.9 Any of the Parties or the Mediator shall be entitled to terminate the Mediation at any time without giving a reason. In the event of any withdrawal of a Party from the Mediation, they shall not be entitled to any refund for their share of the fees for the Mediation and the Parties agree that the remaining Parties (if more than one remaining) shall be free to continue the Mediation if they so decide to do.

7.10 If an Agreement is reached between the Parties, this shall not be legally enforceable unless incorporated into written Heads of Agreement prepared by the Parties or their representatives and signed by the Parties or their representatives. Any representative signing on behalf of a Party shall be deemed to have full authority to enter such Agreement on behalf of the Party for whom they sign.

7.11 The Parties or the Mediator may at any time adjourn the Mediation to consider further information or specific issues raised or to obtain further information or any other reason which the Parties or the Mediator consider helpful to further the Mediation process.

8 **Human Rights**

8.1 The referral of this dispute to Mediation does not affect the rights that may exist for any of the Parties under the European Convention of Human Rights. If the dispute is not settled by Mediation, the Parties' rights to a fair trial remain unaffected.

9 **Exclusion of Liability**

9.1 The Parties agree they shall not be permitted to rely upon any expression or opinion or comment made by the Mediator as to law or fact in the matter of this dispute during the Mediation for the purposes of any concurrent or subsequent Court, other litigation, Tribunal or ADR proceedings between the Parties.

9.2 Neither the Mediator nor his/her firm shall be liable to the Parties for any act or omission in connection with the Mediation services provided unless such act or omission is either fraudulent or in bad faith.

10 **Jurisdiction**

This Mediation Agreement and any Agreement writing referred to above as a result of settlement of the Mediation process shall be governed by, construed and take effect in accordance with the English Law and the Parties hereby exclusively submit to the jurisdiction of the English Courts.

MEDIATION AGREEMENT

Dated the day of 20{}

.....
Signed for the First Party

.....
Signed for the Second Party

.....
Signed by the Mediator

SCHEDULE

Brief Details of the Dispute between the Parties