

## **Association of South West Mediators**

## **MEDIATION AGREEMENT**

**THIS AGREEMENT** is made on

**BETWEEN:**

**AND:**

*(each "a Party" and together "the Parties")*

**AND:**

*(the "Mediator")*

**RECITALS**

- A. Disputes have arisen between the Parties ("the Disputes") as briefly described in Schedule 1 to this Agreement.
- B. The Parties have through the Association of South West Mediators ("ASWM") requested the Mediator, and the Mediator has agreed, on the terms and conditions of this Agreement, to assist the Parties to resolve, if possible, the Disputes.

## **AGREEMENT**

### **Appointment of the Mediator**

1. The Parties appoint the Mediator, and the Mediator accepts the appointment, to mediate the Disputes ("the Mediation") in accordance with the terms of this Agreement.

### **Mediator's fees and Costs**

2. The parties are jointly and severally liable to pay the mediator's fees as outlined in Schedule 2 to this Agreement. A fee of £        is payable by each party to the mediator in advance of the mediation and the mediation will not take place unless and until the fees are paid.
3. If the Mediation does not result in an agreement to resolve the Disputes, the costs of the Mediation, including the Mediator's fees payable in accordance with Clause 2 and Schedule 2, the legal fees and disbursements of advisers (including solicitors, barristers and experts) shall, unless otherwise agreed, be costs in the case.

### **Mediator's Role**

4. The Mediator will be neutral and impartial. The Mediator will assist the Parties to isolate the issues, develop and explore options for resolution of these issues and, if possible, achieve expeditious resolution of the Disputes by agreement between them.
5. The Mediator makes no representation that any such agreement between the Parties will equate with any result which might be achieved by a contested trial of the Disputes or any part of them.
6. The Mediator will not make decisions for a Party or impose a solution on the Parties. If the Parties request and the Mediator agrees, the Mediator may, if the Parties reach an impasse, provide the Parties with a non-binding recommendation based on the Mediator's own knowledge of the subject matter and law.
7. If in the course of 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 will immediately inform the Parties of those circumstances. The Parties will then decide whether the Mediation will continue with that Mediator, or with a new Mediator appointed by the Parties.

### **Co-operation**

8. Each Party must use its best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Disputes. If either Party does not do so, the Mediator may terminate the Mediation.

### **Authority & Representation**

9. In the absence of consent by the other Parties and the Mediator, if a Party is a natural person, that Party must attend the Mediation. If a Party is not a natural person it must be represented at the Mediation by a person with knowledge of the relevant issues and with authority to settle within any range that can reasonably be anticipated and to make agreements binding on that Party in settling the Disputes.

10. Without limiting the responsibility of the Parties under Clause 9, if any Party has any limitation on their authority to settle, this must be disclosed to the Mediator before the commencement of the Mediation.
11. Subject to Clause 3 b., each Party may have one or more persons, including legally qualified persons, to assist and advise them at the Mediation.

### **Conduct of the Mediation**

12. The Mediation, including all preliminary steps, shall be conducted in such manner as the Mediator considers appropriate having due regard to the nature and circumstances of the Disputes, the agreed goal of an efficient and expeditious resolution of the Disputes and the view of each Party as to the conduct of the Mediation.
13. Without limiting the Mediator's powers under Clause 12, the Mediator may give directions as to:
  - (a) the exchange of brief written outlines of the issues raised by the Disputes and a supporting bundle of documents which are relevant to those issues;
  - (b) providing the Mediator prior to the Mediation with any such outlines and documents, and any further information or documents that the Mediator may request following perusal of the outlines and supporting documents; and
  - (c) Preliminary conferences, by phone or meeting, prior to the Mediation.

### **Communication between the Mediator and a Party**

14. The Mediator may meet as frequently as the Mediator deems appropriate with the Parties together or with a Party alone.
  15. The Mediator may communicate with a Party or the Parties orally and/or in writing.
  16. Except as the Parties may otherwise agree in writing, anything said or done by any person at the Mediation is said or done without prejudice and no Party shall be entitled to call evidence of anything said or done by any person at the Mediation.

### **Confidential Information**

17. Information, whether orally or written, disclosed to the Mediator in private will be treated as confidential by the Mediator unless:-
  - (a) the Party making the disclosure states otherwise;
  - (b) the law imposes an obligation of disclosure; or
  - (c) The Mediator believes that the life or safety of any person is or may be at serious risk.
18. The Parties and the Mediator agree in relation to all confidential information disclosed to them during the Mediation, including the preliminary steps:
  - (a) to keep that information confidential;
  - (b) not to disclose that information except to a Party or a representative of that Party participating in the Mediation or if compelled by law to do so; and

- (c) not to use that information for a purpose other than the Mediation save that the information may be used to the extent required to enable ASWM to properly monitor mediations arranged through them and in an anonymised form by ASWM and its mediators for training purposes.
19. Each representative in signing this Agreement is deemed to be agreeing to this provision on behalf of the Party he/she represents and all other persons present on behalf of that Party at the Mediation.

### **Privilege**

20. The Parties and the Mediator agree that, subject to Clause 18, all documents or statements produced, used or made in the Mediation, not otherwise available or known or subject to other obligations of disclosure, will be privileged and will not be disclosed in or relied upon or be the subject of an application to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the Disputes.

### **Subsequent Proceedings**

21. The Mediator will not accept an appointment in relation to any arbitral or judicial proceeding relating to the Disputes or any of them.
22. No Party will take action to cause the Mediator to breach Clause 20.
23. No Party will summons the Mediator to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the Disputes.

### **Termination**

24. If a Party does not wish to continue the Mediation, the Mediator must terminate the Mediation in so far as it relates to that Party and may terminate the Mediation as regards all the Parties.
25. The Mediator may terminate the Mediation if:
- (a) after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Disputes;
  - (b) The Mediator considers it appropriate for any other reason, which the Mediator may decline to give the Parties.
26. The Mediation will be terminated upon execution of a written settlement agreement in respect of the Disputes.
27. Termination of the Mediation does not terminate the operation of Clauses 17 - 31.

### **Settlement**

28. Unless otherwise agreed by the Parties, a settlement reached at the Mediation will need to be written down and signed by the Parties or their representatives in order to be binding on the Parties. If the Mediation has been ordered by a Court, the Parties will advise the Court of the outcome of the Mediation if required by the Court Rules to do so.

## **Enforcement**

29. In the event that one or more of the Disputes is or are settled, as the case may be, either Party may:
- (a) enforce the terms of the settlement agreement by judicial proceedings; and
  - (b) In such proceedings adduce evidence of and incidental to the settlement agreement (other than matters which are privileged by reason of Clauses 17- 19).

## **Indemnity and Exclusion of Liability**

30. The Mediator will not be liable to a Party, except in the case of fraud by the Mediator, for any act or omission (whether negligent or misleading or otherwise) in the performance or purported performance of the Mediator's obligations under this Agreement.
31. The Parties together and separately indemnify the Mediator against all claims, except in the case of fraud by the Mediator, arising out of or in any way connected with any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement.

## **Governing Law and Jurisdiction**

32. This Agreement is governed by, and is construed and takes effect in accordance with English law. Unless otherwise specified in any settlement agreement, the Courts of England will have exclusive jurisdiction in relation to the settlement of any claim, dispute or matter of difference that may arise out of or in connection with the Mediation.

**SCHEDULE 1**

**DESCRIPTION OF THE  
DISPUTES**

## **SCHEDULE 2**

### **COSTS OF THE MEDIATION**

#### **Commercial Disputes**

The fee for the mediation should be discussed and agreed with the mediator in advance of the mediation, and recorded in a signed mediation agreement. Ensure you understand if the fee is per party or in total.

The Mediator's fee for a mediation involving two parties is broadly as follows, although individual mediators may charge more or less:

<b>Amount in dispute</b>	<b>Fees (per party)</b>	<b>Length of session</b>	<b>Extra hours (per party)</b>
£0 to £10,000*	£50 + VAT £100 + VAT	1 hour Up to 2 hours	£50 + VAT
£5,000 to £15,000**	£300 + VAT	Up to 3 hours	£85 + VAT
£15,000 - £50,000 ***	£425 + VAT	Up to 4 hours	£95 + VAT

\* For cases where a telephone mediation is appropriate and both parties agree.

\*\* Non telephone mediation where the parties meet with a mediator.

\*\*\* If the claim is for more than £50,000, the fees will need to be agreed with the mediator.

Mediator's expenses (including travel where chargeable) will be charged at cost.

If you are unable to afford to pay these fees you may qualify for a free mediation from LawWorks -- <http://www.lawworks.org.uk>.

If your dispute is worth less than £10,000 you may be able to access the county courts in house small claims mediation service, which is free. However in order to do so you must issue proceedings, for which there is a fee, unless you are approved to be 'court fees exempt' by the courts.

#### **Venue**

If it is necessary for a venue to be sourced by the ASWM then the costs of the venue and any refreshments will be in addition to the mediation fee and payable by the parties.

#### **Multiple Parties**

The above fees are based on a two party mediation. If there are more than two parties, the length of the mediation session may need to be increased, and the next fee tariff applied - the ASWM or mediator will discuss this matter with you when organising the mediation.

**Time for Payment**

(a)The Mediator's fee must be paid before commencement of mediation.

(b)The Mediator's fees for any additional time and any expenses are to be invoiced after the mediation is completed and are payable within 14 days of the Mediator's invoice. The Mediator is entitled to require the provision of suitable undertakings or other security in relation to fees and expenses.

**SIGNED:**

**On behalf of the Claimant**

**On behalf of the Defendant**

**Mediator**